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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~630~~. 303

HERBERT S. DE SOLLAR, APPELLANT,

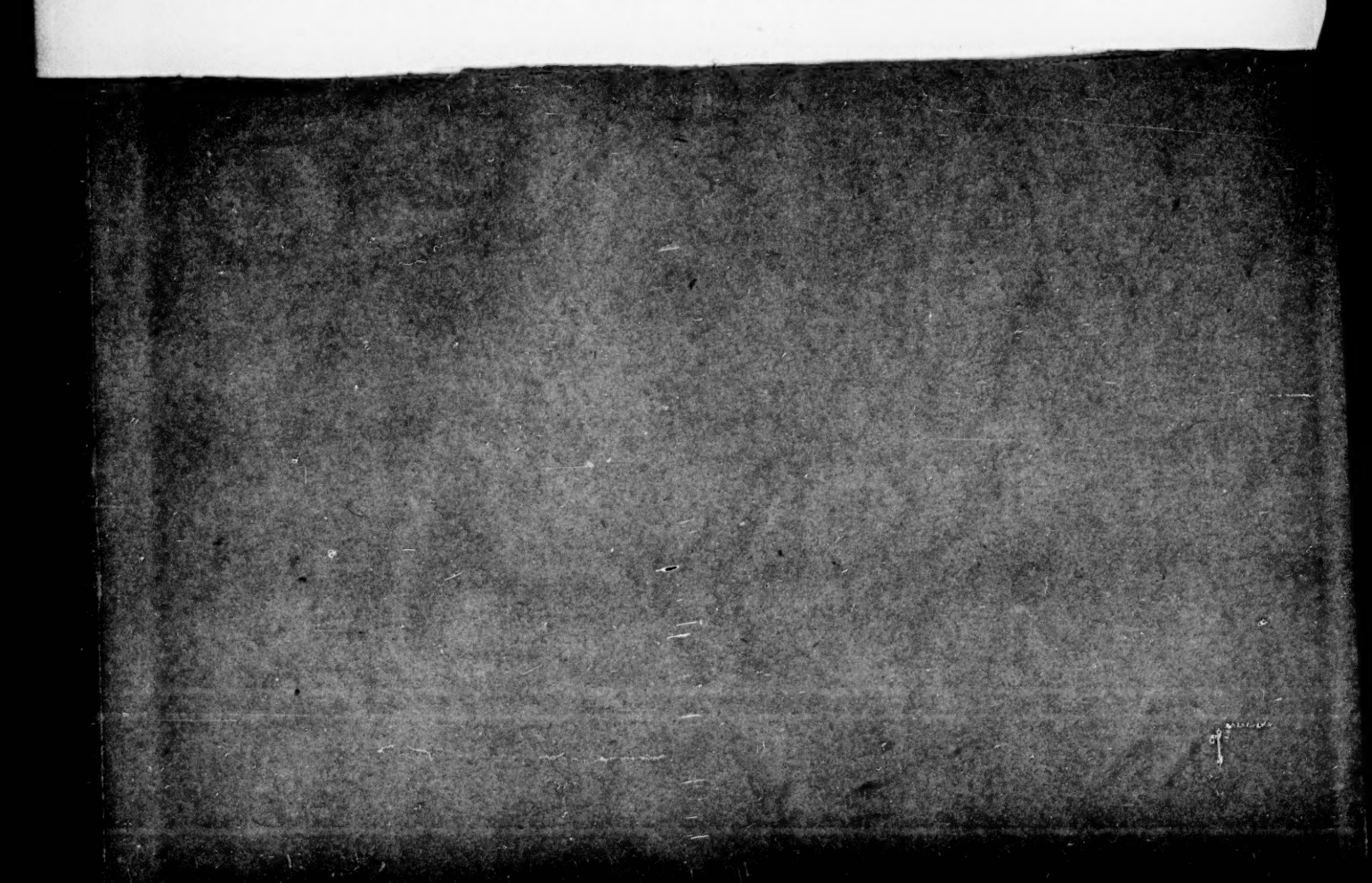
vs.

WILLIAM B. HANSCOMB.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED SEPTEMBER 26, 1891.

(14,862.)



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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Subpœna	7	5
Marshal's return	8	5
Demurrer to bill	9	6
Order overruling demurrer	11	7
Answer to bill	12	8
Replication to answer to bill	20	14
Cross-bill	21	15
Answer to cross-bill	28	20
Replication to answer to cross-bill	34	23
Examiner's report of testimony	36	24
Evidence for complainant	36	24
Testimony of H. S. De Sollar	37	25
Montie Kilbourn	51	33
Judson P. Etheridge	53	35
F. D. Morse	60	40
Wm. H. Melone	61	41
Exhibits offered and objected to	65	43

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 8, 1894.

	Original.	Print.
Evidence for defendant	66	44
Testimony of Wm. B. Hanscome	66	44
John J. Henry	99	65
Frederick W. Herbert	104	68
John A. Bentley	107	69
Evidence for complainant	109	71
Testimony of H. S. De Sollar (recalled)	109	71
Examiner's certificate	115	74
Examiner's fee bill	116	75
Exhibit 1—Stipulation as to Exhibits A, B, C, D, E, and F, and as to other evidence	118	76
Exhibit A—Complaint in Hanscome *vs.* De Sollar	121	77
B—Answer in Hanscome *vs.* De Sollar	125	80
C—Reply in Hanscome *vs.* De Sollar	127	82
D—Verdict in Hanscome *vs.* De Sollar	128	83
E—Judgment in Hanscome *vs.* De Sollar	128	83
F—Charge to jury in Hanscome *vs.* De Sollar	129	83
Exhibit 2—Agreement between Hanscome and De Sollar, March 20, 1888	130	85
3—Proposed agreement prepared by Bentley	131	86
4—Copy of record of letters and contract of sale	132	86
5—Agreement between Hanscome and De Sollar, March 20, 1888	135	88
Testimony from case of Hanscome *vs.* De Sollar	135	89
Testimony of Wm. B. Hanscome	135	89
H. S. De Sollar	160	122
Frederick W. Herbert	168	132
Montie Kilbourne	171	136
Wm. H. Malone	172	138
F. D. Morse	174	140
J. P. Ethridge	175	141
Stipulation as to testimony of Mitchell Benedict	178	145
Testimony of Mitchell Benedict	179	146
Motion for rehearing	187	151
Final decree	189	152
Bond on appeal	190	153
Citation	193	154
Proof of service of citation	194	155
Affidavit as to value	195	155
Clerk's certificate	196	155
Writ of certiorari	197	156
Stipulation as to Exhibits A, B, C, D, E, and F, and other evidence	199	156
Deposition of Henry K. Goldberg	204	159
Clerk's certificate	211	163

1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 6th day of June, A. D. 1889, came Herbert S. De Sollar, by Messrs. Mitchell Benedict and Alfred C. Phelps, his solicitors, and filed in said court his bill of complaint and sued out of and under the seal of said court a subpœna in chancery against William B. Hanscome.

And the said bill is in words and figures as follows, to wit:

Bill of Complaint.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States, Eighth Judicial Circuit, within and for the District of Colorado.

HERBERT S. DE SOLLAR }
vs.
WILLIAM B. HANSCOME. }

To the honorable judges of the circuit court of the United States for the district of Colorado:

Herbert S. De Sollar, of the city of Denver, State of Colorado, and a citizen of the State of Colorado, brings this his bill of complaint against William B. Hanscome, of the city of Wichita, State of Kansas, and a citizen of the State of Kansas.

And thereupon your orator complains and says that on and prior to the first day of February, 1888, the said William B. Hanscome was and still is the owner of lots numbered four (4), five (5), and six (6), in block numbered thirty-six (36), in Park Avenue addition to the city of Denver, county of Arapahoe and State of Colorado, then of the value of five thousand dollars ($5,000) and now
2 of the value of eight thousand dollars ($8,000); that thereafter the said defendant, having theretofore employed one J. J. Henry as his agent or as a real-estate broker to sell and dispose of the above-described property, *and* did, on the 3rd day of February, 1888, in writing, fix the price at which the said property might be sold at five thousand dollars ($5,000.00) cash or its equivalent, out of which he would pay the usual commissions, and afterwards and on the 7th day of February, 1888, did, in writing, modify the terms at which the said property might be sold, so that the same might be for part cash and the balance in reasonable time at 8% per annum interest, agreeing then and thereby with the said agent upon such terms to make a deed for the said property, and afterwards and on the 29th day of February, 1888, in further correspondence with the said Henry, the defendant did authorize and empower him, the said Henry, in writing, to sell the said lots for the said sum of five thousand dollars ($5,000), one-half cash and the

balance in one and two years, with interest at 8% per annum, payable semi-annually, all of which will more fully appear by the letters of the said defendant to the said Henry, to be in due time produced.

And your orator further avers that afterwards and on the 3rd day of March, 1888, the said J. J. Henry, acting for and on behalf of and as agent for the said defendant, made in writing a certain agreement to sell to your orator the above-described property, describing the same in the said agreement as being three lots owned by the said defendant, situated on Clarkson street between 15th and 16th avenues (15th Ave. being known as Colfax avenue), block number of lots not known, but believed to begin the fourth lot from the corner of 16th street and on the west side of Clarkson street, fronting east, the lots each twenty-five (25) feet on Clarkson street and running back to an alley one hundred and twenty-five
3 (125) feet in depth; that your orator should pay five thousand dollars ($5,000.00) for the lots aforesaid, payments as follows, to wit, two hundred dollars ($200.00) in cash on the day of the making of the said agreement, which was paid, twenty-three hundred dollars ($2,300) on or before the 24th day of that month, to wit, the month of March, 1888, and the remaining twenty-five hundred dollars ($2,500.00) in two equal payments of twelve hundred and fifty dollars ($1,250.00) each, due and payable, respectively, on or before one and two years from date of deed, each bearing interest at the rate of 8 % per annum, interest payable in semi-annual installments, said deferred payments to be secured by notes and deed of trust on the property aforesaid; that in and by the agreement aforesaid it was also provided that on or before the 24th day of March, 1888, the said defendant should give a good, sufficient, and satisfactory deed for the said property, at which time the papers should all be made out and executed, and that the property should be clean and clear of all encumbrances at the time of the conveyance thereof by the defendant, and in and by the said agreement it was provided that if your orator should be in default in the meeting of the payment of the twenty-three hundred dollars ($2,300.00) that the two hundred dollars ($200.00) paid as above stated should be forfeited.

And your orator further avers that at and prior to the said 3rd day of March, A. D. 1888, said Hanscome was the owner of three lots on Clarkson street between 15th and 16th avenues and on the west side of Clarkson street, fronting east, each twenty-five (25) feet on Clarkson street, running back to an alley one hundred and twenty-five (125) feet, which were and are the same lots first above herein described. Said Hanscome at no time prior to nor since the date last aforesaid hath owned, possessed, or been interested in any other lots on Clarkson street aforesaid save the three above named.

4 And your orator further avers that the said defendant subsequently and prior to March 20th, A. D. 1888, after being fully advised of the action of the said Henry, as his agent, and of the contract and agreement aforesaid, fully ratified and confirmed

the said agreement, notwithstanding the s-ight departures therein contained from the authority given by the said defendant to the said Henry by the letters aforesaid; and your orator further avers that the said ratification was on or about the 10th day of May, 1889, found and determined by the verdict of a jury and the judgment of the honorable court in a certain action at law then pending in the said court, wherein the said defendant was plaintiff and your orator was defendant, in which an issue was made, tried, and determined as to whether or not there was such ratification, and such ratification was determined in favor of your orator and such ratification found to have been made.

And your orator further avers that at all times subsequent to the 3rd day of March, 1888, he was and hath been and still is ready and willing to perform on his part the agreement aforesaid, and on divers occasions during the said month of March declared his willingness and readiness so to do and requested the said defendant to perform on his part, which he, the said defendant, refused to do, and on or about the 24th day of March he, the said defendant, left the State of Colorado and absented himself therefrom and was much of the time for many months thereafter travelling in different portions of the country until on or about the first week in the month of December, when he temporarily returned to the State of Colorado and instituted against your orator the action at law aforesaid, in which was involved the validity of the said contract under all the facts and circumstances relating thereto and especially in connection with the ratification thereof, so that by reason of the matters and things aforesaid your orator was hindered and delayed in bringing this his bill for specific performance of the contract aforesaid.

And your orator further avers that afterwards and on or about the 15th day of May, 1889, your orator tendered to the said defendant the sum of thirty-eight hundred dollars ($3.800.00), being more that the entire residue of the cash payment required to be made for the said property and the amount of the first twelve hundred and fifty dollars ($1,250.00) payment, together with interest thereon from the date of the aforesaid agreement until the tender aforesaid, and also interest on the remaining twelve hundred and fifty dollars ($1,250) for a like period, and did then and there also in connection therewith tender a note for the remaining twelve hundred and fifty dollars ($1,250.00), payable to the said defendant, signed by your order, bearing date March 3, 1888, and due and payable on or before two years from that date, bearing interest at the rate of 8% per annum, payable semi-annually, and did then and there also tender a deed of trust in due form on the said property, signed by your orator, duly acknowledged by him, securing the aforesaid note, and did also in connection therewith tender to the said defendant for his signature and acknowledgment an ordinary warranty deed for the said property conveying the same to your orator, and did then and there request the said defendant to execute the same and accept and receive the said money and note and trust deed, which he, the said defendant, did then and there refuse to do and since hath re-

fused, thereby unlawfully and fraudulently seeking to defraud your orator in the premises, all of which acts of the defendant in the premises are contrary to equity and good conscience and tends to do manifest wrong and injury to your orator, and your orator is remediless in the premises save by the equitable aid of the
6 court herein; and your orator further avers and shows here to the court that he is now ready and willing on his part to perform the agreement and make payment for the said property as thereby required, and is ready and willing to bring into court at any time the money aforesaid and the note and deed of trust aforesaid so by him tendered to the defendant aforesaid whenever directed or required by the court so to do, and now and here tenders to the said defendant the said money, note, and deed of trust.

In tender consideration whereof, and to the end that justice and equity may be done in the premises, your orator prays that the said William B. Hanscome, the defendant aforesaid, may by the proper process of this honorable court be summoned to appear, at a time to be fixed, and well and truly answer all and singular the matters and things alleged in this your orator's bill of complaint the same as if particularly interrogated in reference thereto, but not upon oath, the oath to his said answer being hereby expressly waived, and that upon final hearing herein the said defendant may be decreed to make to your orator a good and sufficient deed for the premises above herein particularly described conveying the same to your orator in fee simple and specifically perform on his part the aforesaid contract and agreement made in his behalf by the said Henry, as his agent, in all respects as in accordance with justice and equity he should do; that the said defendant may be decreed to pay all the costs herein, and that your orator may have such other and further relief in the premises as shall be according to justice and equity and as to the court shall seem meet and proper.

MITCHELL BENEDICT,
ALFRED C. PHELPS,
Compl't's Solicitors.

STATE OF COLORADO, }
County of Arapahoe, } ss:

7 On this sixth day of June, A. D. 1889, before me personally appeared the above-named Herbert S. De Sollar and made oath that he has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on his information or belief, and that as to those matters he believes it to be true.

H. S. DE SOLLAR.

Subscribed and sworn to before me this sixth day of June, A. D. 1889.

[SEAL.] CHARLES A. STOKES,
Notary Public.

My commission expires November 21st, 1892.

(Indorsed:) 2437. In the circuit court. De Sollar *vs.* Hanscome. Bill of complaint. Filed Jun- 6, 1889. William A. Willard, clerk. Benedict & Phelps, solicitors for complainant.

And the subpœna and marshal's return *is* in words and figures as follows, to wit:

Subpœna.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States of America to William B. Hanscome, Greeting:

You are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in July next (it being the 1st day of July, A. D. 1889) to answer the bill of complaint of Herbert S. De Sollar, this day filed in the
8 office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver aforesaid, this sixth day of June, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the 113th year.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Memorandum.

The above-named defendant is hereby notified that unless he shall enter his appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against him as confessed and a decree entered accordingly.

WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Marshal's Return.

Return not served.

ZEPH. T. HILL.
U. S. Marshal.

9 (Indorsed:) Gen. No., 2437. Circuit court of the United States for the district of Colorado. In chancery. Herbert S. De Sollar *vs.* William B. Hanscome. Subpœna. Returnable to rule day, first Monday in July, A. D. 1889. William A. Willard, clerk. Filed this 22 day of July, A. D. 1889. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Benedict & Phelps, of Denver, compl't's sol'r.

And afterwards and on, to wit, the 14th day of June, A. D. 1889, came the said defendant, by J. A. Bentley, his solicitor, and filed in said court and in said cause his demurrer to the bill of complaint heretofore filed herein.

And the said demurrer is in words and figures as follows, to wit:

Demurrer to Bill.

In the Circuit Court of the United States, District of Colorado.

HERBERT S. DE SOLLAR
vs.
WILLIAM B. HANSCOME.

The demurrer of William B. Hanscome to the bill of complaint of Herbert S. De Sollar against this defendant in chancery exhibited.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, demurs to the said bill and for cause of demurrer shows that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any relief against the defendant as to the matters containd in said bill or any of them.

10 And for further and special grounds of demurrer the defendant shows:

1. That the said bill does not state or show with sufficient particularity and certainty whether or not the alleged authority of the said J. J. Henry to make the pretended agreement with the complainant on behalf of the defendant was in writing, nor with sufficient certainty the terms of such alleged authority.

2. That said bill does not state with sufficient particularity and certainty the contents of the alleged writings nor of either of them, dated respectively February 3rd, 1888, February 7, 1888, February 29th, 1888, and March 3rd, 1888.

3. That said bill does not state and set forth with sufficient particularity and certainty how and in what manner and by what means this defendant on the 20th day of March, 1888, or prior or subsequently thereto ratified or confirmed the alleged agreement.

4. That the said bill does not state and set forth with sufficient particularity and certainty the action at law and the issues tried

therein, wherein the said bill of complaint charges that the jury found and determined by their verdict the ratification of the alleged agreement by the defendant before referred to in the same paragraph of said bill of complaint.

5. That the said bill does not state or show with sufficient particularity and certainty the acts and doings of the said complainant in respect to the performance by him of the alleged agreement upon his own part.

J. A. BENTLEY,
Solicitor for Defendant.

Dated June 14, 1889.

DISTRICT OF COLORADO, } ss:
County of Arapahoe, }

William B. Hanscome, being duly sworn, deposes and says that he is the defendant in the action described in the foregoing
11 demurrer, that he has read the said demurrer and knows the contents thereof, and that the same is not interposed for delay.

WILLIAM B. HANSCOME.

Subscribed and sworn to before me June 14, 1889.

[SEAL.] WILLIAM A. WILLARD,
Clerk District Court U. S.,
By F. W. TUPPER, *Deputy Clerk.*

I, the undersigned, of counsel for the said defendant, William B. Hanscome, do hereby certify that, in my opinion, the foregoing demurrer to the bill of complaint in the above-entitled cause is well founded in point of law.

J. A. BENTLEY, *Of Counsel.*

Dated June 14, 1889.

(Indorsed:) 2437. In the circuit court of the United States, district of Colorado. Herbert S. De Sollar *vs.* William B. Hanscome. Demurrer. J. A. Bentley, solicitor for defendant. Filed Jun- 14, 1889. William A. Willard, clerk.

And afterwards and on, to wit, the 27th day of July, A. D. 1889, the same being one of the regular juridical days of the May term, A. D. 1889, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Demurrer to Bill Overruled.

HERBERT S. DE SOLLAR } 2437. In Chancery. Bill for Specific
vs. Performance and for Other Relief.
WILLIAM B. HANSCOME. }

At this day comes the said complainant, by A. C. Phelps, Esq., his solicitor, and the said defendant, by J. A. Bentley, Esq., his solicitor, also comes.

12 And the demurrer of the said defendant to the bill of complaint having heretofore come to be heard and having been submitted to the court and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court now here that the said bill of complaint and the matters and things herein alleged is sufficient in law to be answered unto, and so the said demurrer is overruled.

And thereupon it is ordered by the court that the said defendant answer herein by the September rule day next.

And afterwards and on, to wit, the 31st day of August, A. D. 1889, came again the said defendant, by his solicitor aforesaid, and filed in said court and in said cause his answer to the bill of complainant heretofore filed herein.

And the said answer is in words and figures as follows, to wit:

Answer to Bill.

In the United States Circuit Court for the District of Colorado.

HERBERT S. DE SOLLAR)
vs.
WILLIAM B. HANSCOME.)

The answer of the defendant, William B. Hanscome, to the bill of complaint of Herbert S. De Sollar.

This defendant, now and at all times hereafter, reserving all manner of benefit and advantage to itself of exception to the many errors and insufficiencies in said bill contained, for answer thereto or unto so much or such parts thereof as this defendant is advised is material for it to make answer unto, he answers and says:

1. That it is true that on and prior to the first day of Feb-
13 ruary, 1888, he was and still is the owner of lots numbered four (4), five (5), and six (6), in block numbered thirty-six (36), in Park Avenue addition to the city of Denver, county of Arapahoe and State of Colorado, then of the value of five thousand dollars and now of much greater value.

2. That he denies that theretofore or at any time he employed one J. J. Henry, as his agent or as a real-estate broker or in any capacity, to sell and dispose of the said property, and denies that on the 3rd day of February, 1888, in writing or otherwise, he fixed the price at which the said property might be sold at five thousand dollars, or its equivalent, out of which he would pay the usual commissions, and denies that afterwards, on the 7th day of February, 1888, he did in writing modify the terms at which the said property might be sold, so that the same might be for part cash and the balance in reasonable time at 8 per cent. per annum interest, agreeing then and thereby with the said alleged agent upon such terms to make a deed for the said property, and denies that afterwards and on the 29th day of February, 1888, the defendant authorized and empowered him, the said Henry, in writing to sell the

said lots for the sum of five thousand dollars, one-half cash and the balance in one or two years, with the interest at 8 per cent. per annum, payable semi-annually—that is to say, the said defendant denies that in and by the said alleged or any writings or by any means whatever he, the defendant, authorized the said J. J. Henry to contract for and on behalf of defendant for the sale and conveyance of said lots, and shows to the court that the alleged writing of February 3rd, 1888, was a letter addressed by the said defendant to the said J. J. Henry, and the following is a substantial copy thereof, to wit:

"WICHITA, KAS., *Feb. 3d*, 1888.

14 J. J. Henry, Esq., Denver, Colo.

DEAR SIR: Yours of the 30th is rec'd, and in reply will say that I am not particularly anxious to trade my unincumbered lots for encumbered improved property, but I will look into the matter and advise you if I do not make a trip to Denver soon, as I may conclude to do in a few weeks. Where is Ellsworth Str. & S. B.? How far from the Circle R'oad depot?

The 3 lots on Clarkson St. I will not sell for less than $5,000 cash, or its equivalent, and pay the usual commission for selling. What is the part*ie*'s name that wants to trade the brick house?

Yours truly, W. B. HANSCOME."

And further shows to the court that the alleged writing of February 7th, 1888, was a letter addressed by the defendant to said Henry, and the following is a substantial copy thereof, to wit:

"WICHITA, KANS., *Feb'y 7th*, 1888.

Judge J. J. Henry, Denver, Col.

DEAR SIR: Yours is rec'd. As I have before written you, the (3) lots on Clarkson St. I will not sell for less than $5,000 for the 3. I was offered $4,500 cash for those lots net, no commission, 6 months ago, but declined. If the party wants them at the price I have named, part cash, balance reasonable time, at 8 per cent. in'st, I will make a deed of same.

Yours truly, W. B. HANSCOME."

And further shows to the court that the alleged writing of February 29th, 1888, was a letter addressed by defendant to the said Henry, and the following is a substantial copy thereof, to wit:

"WICHITA, KANS., *Feb.* 29, 1888.

Jno. J. Henry, Esq., Denver, Col.

DEAR SIR: Yours of the 25th is rec'd. Am sorry you have to work so hard to sell my lots of Clarkson St., for I am not so very anxious to close them out, even at the $5,000.00, the price I hold them at some time since. If I make any change in them it will be to advance the price, as I had just about as soon hold them as to sell for $5,000, and I think the time is up that I offered to sell them for that sum. Friends have advised me not to sell them

now, as property was advancing in that section. In no case should I sell them at less than $5,000, and I should insist on having at least ½ cash and the balance in one and two years at the longest, interest at 8 p'r ct. & payable semi-annually, and I should prefer to make the time shorter, as I now expect to be in Denver on or before March 10th. We can then arrange about a sale, if not disposed of before, but, as I have before written, I am not at all anxious to sell at my first offer of $5,000 & half cash.

Yours truly, W. B. HANSCOME."

15 3. And the defendant, further answering, says that he denies that on the 3rd day of March, 1888, the said J. J. Henry made the writing in manner, form, and substance as described in the said bill of complaint. On the other hand, the defendant alleges that the writing made on that day by the said Henry in reference to the said lots and a sale thereof to the complainant was substantially in the words and figures following, viz:

"DENVER, COLORADO, *March* 3, 1888.

Know all men by these presents that I, John J. Henry, acting as agent for Wm. B. Hanscome, of Wichita, Kansas, have agreed to sell to H. S. De Sollar, of the city of Denver and State of Colorado, the three lots owned by the said Wm. B. Hanscome, situated on Clarkson Str. between 16th and 15th avenues; 15th avenue is known as Colfax avenue; — block, numbers of lots not known, but they are believed to begin the 4th lot from the corner of 16th street and are on the west side of Clarkson Str., fronting east. The lots are each 25 ft. on Clarkson St., running back to an alley, and are 145 ft. in depth. Said De Sol-ar is to pay five thousand dollars, $5,000, for the lots above described, payments as follows, to wit: Two hundred dollars, $200, in cash this day, the receipt whereof is hereby acknowledged, and twenty-three hundred dollars, $2,300, on or before the evening of the 24th day of the present month of March; the remaining sum of the purchase-money, $2,500, one-half, or $1,250, *are* to be due and payable on or before one year from the date of deed, and the other half, $1,250, in two years, on or before, from the date of deed, each sum bearing interest at the rate of eight, 8, per cent. per annum, interest payable semi-annually; payment on the deferred amounts to be secured by notes and deed of trust on the property now bargained for.

It is understood that a good, sufficient, and satisfactory deed is to be made by the said Wm. B. Hanscome for the said described property on or before the 24th day of the present month of March, at which time the papers are all to be dated and executed. It is also further understood that the property conveyed is to be clean and clear of all incumbrance.

And it is further understood that if the said H. S. De Sol-ar is or should be in default in meeting the second payment herein provided for, then the $200 paid this day shall be forfeited.

JNO. J. HENRY.
H. S. DE SOLLAR."

4. And the said defendant, further answering, says that the foregoing letters are all the authority which the said Henry had in writing or otherwise to act for or on behalf of the defendant in any capacity whatever in relation to the said lots, and defendant alleges that the same did not constitute a written authority to the said J. J. Henry to make and sign the said agreement for and on behalf of the defendant.

16 5. And the defendant, further answering said bill of complaint, denies that either prior or subsequently to the 20th day of March, 1888, he ratified and confirmed fully or otherwise the said agreement of March 3, 1888.

6. And the said defendant, further answering, denies that on or about the 10th day of May, 1888, it was found or determined by the verdict of a jury or the judgment of this court in an action at law then pending or ever, wherein this defendant was plaintiff and the complainant was defendant, that this defendant had ratified or confirmed the aforesaid agreement made by the said J. J. Henry, and denies that an issue was made, tried, and determined in such alleged action at law as to whether or not this defendant had ratified the said alleged agreement signed by the said Henry, and denies that such issue was determined in favor of the complainant or that it was found that this defendant had ratified the said agreement made by said Henry.

7. And, further answering, the defendant denies that at all times subsequent to the third day of March, 1888, or at any time previous to the date when the said agreement, by its terms, expired, the plaintiff was ready or willing to perform on his part the agreement signed by said Henry, and denies that he declared his willingness and readiness so to do, and denies that complainant requested the defendant to perform the same on his part, but admits that he, the defendant, refused and still refuses to perform the said agreement.

8. And defendant denies that he was absent from said State of Colorado until on or about the first week of December, and alleges that he left said State on the 24 day of March to return to his home in Wichita, in the State of Kansas, and returned to Denver on or about the 20th day of July, 1888, and there remained until the 20th day of August, 1888, and that the complainant well knew at

17 that time that the defendant was sojourning in Denver.

9. And the defendant, further answering, denies that the action at law mentioned in the bill of complaint as having been brought by this defendant against the complainant involved the validity of the contract made by the said J. J. Henry under all the facts and circumstances relating thereto, and especially in connection with the ratification thereof averred in the bill of complaint, or at all with respect to the said ratification, and denies that by reason of any or all the matters set out in said bill in respect to the absence of this defendant from the State of Colorado or the bringing of the said action at law by this defendant against the complainant the complainant was hindered or delayed in bringing this suit for specific performance.

10. And the defendant, further answering, admits that the complainant on or about May 15th, 1889, tendered to the defendant the sum of thirty-eight hundred dollars and therewith a note for twelve hundred and fifty dollars bearing date March 3rd, 1888, payable on or before two years from that date and bearing interest at the rate of eight per cent. per annum, payable semi-annually, and a deed of trust upon the aforesaid lots securing the said note, and did also tender to the defendant for his execution a warranty deed in usual form conveying said property to the complainant, and then and there requested the defendant to execute said warranty deed and accept and receive the said note and trust deed, all of which the defendant refused to do, but the defendant denies that the said sum of money so tendered was more than the entire residue of the cash payment required by the said Henry contract to be made for the said property and the amount of the first twelve hundred and fifty dollars payment, together with interest thereon from the date of the aforesaid agreement until the date of such tender and
18 the interest on the remaining twelve hundred and fifty dollars for the like period. On the other hand, the defendant alleges that the amount of money required for the purpose for which the said tender was made as aforesaid was much more than the said thirty-eight hundred dollars, to wit, four thousand ten dollars and seventy-eight cents or thereabouts.

11. And the defendant, further answering said bill of complaint, alleges and shows to the court that at the time of making the said agreement with said Henry the complainant did not pay to said Henry the sum of two hundred dollars, as recited and stated in the said agreement, but a much less sum, to wit, not to exceed the sum of one hundred and fifty dollars, and did not pay the said full sum of two hundred dollars or any other sum than the said less amount to the said Henry nor to this defendant at any time on account of the purchase of the said lots and for the use of the defendant; and, further answering, defendant says that at the time of the making of the said agreement with said Henry and always thereafter the complainant concealed from this defendant the true amount which he had paid to said Henry for the purpose of defrauding and deceiving the defendant and leading him to believe that the said sum of two hundred dollars mentioned in said agreement had been paid by the complainant to said Henry on the purchase of said lots and under said agreement for the use of the defendant and thereby to obtain the said property from the defendant and his warranty deed thereof for the consideration of the sum of five thousand dollars when in fact a less sum had been paid by the said complainant.

12. And, further answering the said bill of complaint, the defendant alleges and shows to the court that the complainant did not at any time on or before the 24th day of March, 1888, pay or offer to pay to the defendant the sum of twenty-three hundred dollars, as provided in the said Henry agreement, and did not,
19 on or before the said 24th day of March, provide for or offer to provide for the payment of twelve hundred and fifty dol-

lars on or before one year nor for the payment of twelve hundred and fifty dollars on or before two years, as mentioned in the said agreement.

13. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Dated August 31, 1889.

J. A. BENTLEY,
Solicitor for Defendant.

DISTRICT OF COLORADO, } ss:
County of Arapahoe, }

On this 31st day of August, A. D. 1889, personally appeared before me the above-named William B. Hanscome and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters alleged therein on his information and belief, and as to those matters he verily believes it to be true.

W. B. HANSCOME.

Subscribed and sworn to before me this 31st day of August, 1889.

[SEAL.]

WILLIAM A. WILLARD,
Clerk District Court U. S.,
By F. W. TUPPER, *Deputy Clerk.*

20 (Indorsed:) 2437. Circuit court of the United States, district of Colorado. Herbert S. De Sollar *vs.* William B. Hanscome. Answer. J. A. Bentley, defendant's solicitor. Filed Aug. 31, 1889. William A. Willard, clerk.

And afterwards and on, to wit, the 7th day of October, A. D. 1889, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his replication to the answer heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

Replication to Answer to Bill.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the 8th Judicial Circuit within and for said District.

HERBERT S. DE SOLLAR, Plaintiff, }
vs.
WILLIAM B. HANSCOME, Defendant. }

The replication of Herbert S. De Sollar, the complainant aforesaid, to the answer of William B. Hanscome, the defendant aforesaid.

The said complainant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by the said complainant; without this, that any
21 other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, avoided, traversed, or denied, is true; all which matters and things the complainant is and will be ready to aver, maintain, and prove as this honorable court may direct, and humbly prays as in and by his said cross-bill he has already prayed.

M. BENEDICT &
A. C. PHELPS,
Solicitors for Complainant.

(Indorsed:) 2437. In circuit court of eighth judicial circuit, district of Colorado. Herbert S. De Sollar *vs.* Wm. B. Hanscome. Replication. Filed Oct. 7, 1889. William A. Willard, clerk. Benedict & Phelps, for complainant.

And afterwards and on, to wit, the 4th day of September, A. D. 1889, came William B. Hanscome, by J. A. Bentley, his solicitor, and filed in said court and in the cause in said court then pending, wherein Herbert S. De Sollar was complainant and William B. Hanscome was defendant, his cross-bill of complaint.

And the said cross-bill is in words and figures as follows, to wit:

Cross-bill of Complaint.

In the Circuit Court of the United States, District of Colorado.

HERBERT S. DE SOLLAR
vs.
WILLIAM B. HANSCOME. } In Equity. No. 2437.

Cross-bill of William B. Hanscome against Herbert S. De Sollar.

To the honorable the judges of the circuit court of the eighth
22 judicial circuit of the United States of America, sitting in and for the district of Colorado:

Your orator, William B. Hanscome, of Wichita, in the State of Kansas, respectfully represents unto your honors that on the 6th day of June, A. D. 1889, Herbert S. De Sollar exhibited in this honorable court his bill of complaint against your orator, praying the decree of the court against your orator for the specific performance of an alleged contract for the sale to him, the said Herbert S. De Sollar, of the lands hereinafter particularly described; and your orator, being served with process, appeared and put in his answer thereto, as by the said bill and other pleadings and proceedings in the said cause now remaining on file and of record in this honorable court, reference thereto being had, will more fully appear.

And your orator further shows to the court that he is now and at all times mentioned in his cross-bill was the owner in fee and in the possession of lots numbered four (4), five (5), and six (6), in block numbered thirty-six (36), in Park Avenue addition to the city of Denver, in the county of Arapahoe and State of Colorado.

And your orator further shows that in the month of February, 1888, one J. J. Henry, of the said city of Denver, was authorized by your orator to receive from persons desiring to purchase the said lots offers of purchase and report the same to your orator, and in that behalf your orator addressed the said J. J. Henry on the third day of said February a letter substantially in the words and figures following, to wit:

"WICHITA, KANS., *Feb.* 3*d*, 1888.

J. J. Henry, Esq., Denver, Colo.

DEAR SIR: Yours of the 30th is rec'd, and in reply will say that I am not particularly anxious to trade my unincumbered lots for encumbered improved property, but I will look into the matter and advise you if I do not make a trip to Denver soon, as I may conclude to do in a few weeks. Where is Ellsworth Str. & S. B.—how
far from the Circle r'road depot?
23 The 3 lots on Clarkson St. I will not sell for less than $5,000 cash or its equivalent, and pay the usual commission for selling. What is the partie's name that wants to trade the brick house?

Yours truly, W. B. HANSCOME."

And thereafter, on the 7th day of said February, addressed to the said Henry in that behalf a letter substantially in the words and figures following, to wit:

"WICHITA, KANS., *Feb'y 7th*, 1888.

Judge J. J. Henry, Denver, Col.

DEAR SIR: Yours is rec'd. As I have before written you, the (3) lots on Clarkson St. I will not sell for less than $5,000—for the 3. I was offered $4,500 cash for those lots, nett, no commission, 6 months ago, but declined. If the party wants them at the price I have named—part cash, balance reasonable time at 8 per ct. int'st—I will make a deed of the same.

Yours truly, W. B. HANSCOME."

And thereafter, on the 29th day of said February, addressed to the said Henry in that behalf another letter substantially in the words and figures following, to wit:

"WICHITA, KANS., *Feb.* 29, 1888.

Jon. J. Henry, Esq., Denver, Col.

DEAR SIR: Yours of the 25th is rec'd; am sorry you have to work so hard to sell my lots on Clarkson St., for I am not so very anxious to close them out even at the $5,000.00, the price I held them at some time since. If I make any change on them it will be to advance the price, as I had just about as soon hold them as to sell for $5.000, and I think the time is up that I offered to sell them for that sum. Friends have advised me not to sell them now, as property was advancing in that section. In no case should I sell them for less than $5,000, and I should insist on having at least ½ cash and the balance in one and two years at the longest, interest at 8 per ct. & payable semi-annually, and I should prefer to make the time shorter. As I now expect to be in Denver on or before March 10th, perhaps we can then arrange about a sale, if not disposed of before, but, as I have before written, I am not at all anxious to sell at my first offer of $5,000 & half cash.

Yours truly, W. B. HANSCOME."

And your orator further shows that without any other or further authority or power in the premises, in writing or otherwise, which was well known to the said Herbert S. De Soliar, the said
24 Henry — said De Sollar, as your orator is informed and believes, on or about the 3rd day of March, 1888, made and signed a certain paper-writing substantially in the words and figures following, to wit:

"DENVER, COLORADO, *March* 3, 1888.

Know all men by these presents that I, John J. Henry, acting as agent for Wm. B. Hanscome, of Wichita, Kansas, have agreed to sell to H. S. De Solar, of the city of Denver and State of Colorado, the three lots owned by the said Wm. B. Hanscome, situated on Clarkson Str. between 16th and 15th avenues; 15th avenue is known as Colfax avenue; — block, numbers of lots not known,

but they are believed to begin the 4th lot from the corner of 15th street and are on the west side of Clarkson Str., fronting east. The lots are each 25 ft. on Clarkson St., running back to an alley, and are 145 ft. in depth. Said De Solar is to pay five thousand dollars, $5,000, for the lots above described, payments as follows, to wit: Two hundred dollars, $200, in cash this day, the receipt whereof is hereby acknowledged, and twenty-three hundred dollars, $2,300, on or before the evening of the 24th day of the present month of March: the remaining sum of the purchase-money, $2,500, one-half, or $1,250, *are* to be due and payable on or before one year from the date of deed, and the other half, $1,250, in two years, on or before, from date of deed, each sum bearing interest at the rate of eight, 8, per cent. per annum, interest payable semi-annually; payment on these deferred amounts to be secured by notes and deed of trust on the property now bargained for.

It is understood that a good, sufficient, and satisfactory deed is to be made by the said Wm. B. Hanscome for the said described property on or before the 24th day of the present month of March, at which time the papers are all to be dated and executed. It is also further understood that the property conveyed is to be clean and clear of all incumbrance.

And it is further understood that is the said H. S. De Solar is or should be in default in meeting the second payment herein provided for, then the $200 paid this day shall be forfeited.

JNO. J. HENRY.
H. S. DE SOLLAR."

And your orator further shows that he is informed and believes that the said writing was on or about the said date delivered to the said Herbert S. De Sollar and is the same identical, pretended, and alleged agreement in writing the specific performance of which is sought by the said Herbert S. De Sollar in his said original bill of complaint.

And your orator further shows that the said letters were not and do not contain any sufficient and lawful authority to the said Henry for the making of said writing, and that said Henry had not at the time of the making thereof or ever any
25 lawful authority, in writing or otherwise, to make or sign the said writing for or on behalf of your orator or to bind your orator to the terms thereof. Nevertheless the said Herbert S. De Sollar then and thereafter claimed, pretended, and held out that by virtue of the said writing and the payment of two hundred dollars thereunder, which is recited in said writing to have been paid on the date thereof, and the aforesaid letters addressed by your orator to the said Henry he, said De Soallar, had acquired the right to purchase the said lots upon the terms and conditions mentioned in the said pretended agreement.

And your orator further shows that, on the 24th day of March, 1888, at or about the hour of four o'clock in the afternoon, the said Herbert S. De Sollar, without any right or authority so to do and without the consent of your orator, caused to be entered and spread

upon the official record of titles to lands in the county of Arapahoe in the chain of your orator's title to his lots, kept by the recorder of deeds for said county, the aforesaid three letters addressed by your orator to said Henry and the aforesaid writing and pretended agreement made by said De Sollar and said Henry on or about the 3rd day of March, 1888.

And your orator further shows that it is not true, as recited in the pretended agreement, that the said Herbert S. De Sollar agreed with said Henry to pay the sum of five thousand dollars for the said lots; that he did not agree to pay therefor any greater sum than four thousand nine hundred and fifty dollars, and that it is not true, as recited in said pretended agreement, that the said De Sollar, on the day of the date thereof, paid to the said Henry the sum of two hundred dollars; that he did not pay to said Henry any greater sum than one hundred and fifty dollars. Nevertheless the said De Sollar concealed from your orator the truth in respect to the matters aforesaid and pretended and held out to your orator
that he had agreed with said Henry to pay the said sum of
26 five thousand dollars for the said lots, as stated in said pretended agreement, and that he had paid two hundred dollars thereof to the said Henry, as in said alleged agreement recited.

And your orator alleges that the said pretended agreement and the transaction between the said Henry and said De Sollar in making the same and of the said De Sollar in causing the said letters and the said pretended agreement to be recorded as aforesaid and the concealment of the truth in respect to the amount agreed to be paid by said De Sollar for said lots and the amount of cash actually paid to the said Henry at the time of the making of said writing were fraudulent and a fraud upon your orator, and that the said several acts and concealments were done for the purpose of enabling the said De Sollar to obtain the title of your orator to said lots for a less sum than your orator was willing to accept therefor and upon conditions more favorable to the said De Sollar than your orator was willing to make and to embarrass your orator in the sale of the said property to another person than the said De Sollar.

And your orator further shows that the said pretended agreement and the record thereof, as aforesaid, have the effect to embarrass your orator in the enjoyment and sale of the same and tend greatly to depreciate their value, and do constitute a cloud upon your orator's title to said lots which in good conscience ought to be removed.

And your orator further shows that on or about the sixth day of March, 1888, the said J. J. Henry forwarded by mail, directed to your orator at Wichita aforesaid, the sum of fifty dollars as a portion of the money which he had received from said De Sollar, which money your orator received at Denver on or about the 12th day of March, 1888, and about the same day offered to return the same to
said De Sollar, and afterwards and on or about the 21st day
27 of March, 1888, he offered and tendered the same back to the said De Sollar, which said De Sollar then and there on

both occasions refused to receive; and your orator now has the same and hereby offers to deposit the said fifty dollars in court for the defendant or to pay over the same, as the court may hereupon direct.

Forasmuch, therefore, as your orator is without remedy in the premises except in a court of equity, your orator prays that the said alleged and pretended agreement may be declared null and void and as a cloud upon the title of your orator may be removed and be delivered up to be cancelled, and that your orator may have such other and further relief in the premises as the nature of his case shall require and to the court shall seem meet.

J. A. BENTLEY,
Solicitor for William B. Hanscome.

Dated September 3rd, A. D. 1889.

DISTRICT OF COLORADO, }
County of Arapahoe, } *ss:*

William B. Hanscome, first being duly sworn, *and* says that he is the identical William B. Hanscome who is described in the foregoing his cross-bill against Herbert S. De Sollar; that he has read the said cross-bill and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

W. B. HANSCOME.

Subscribed and sworn to before me this 3rd day of September, A. D. 1889.

[SEAL.]

WILLIAM A. WILLARD,
Clerk District Court U. S.,
By F. W. TUPPER, *Deputy Clerk.*

28 (Indorsed:) Cross 2437 bill. In the circuit court of the United States, district of Colorado. Herbert S. De Sollar *vs.* William B. Hanscome. Cross-bill of William B. Hanscome. J. A. Bentley, solicitor for William B. Hanscome. Filed Sep. 4, 1889. William A. Willard, clerk.

And afterwards and on, to wit, the 7th day of October, A. D. 1889, came Herbert S. De Sollar, by his his solicitors aforesaid, and filed in said court and in said cause his answer to cross-bill heretofore filed herein.

And the said answer is in words and figures as follows, to wit:

Answer to Cross-bill.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the United States Circuit Court, 8th Judicial Circuit within and for said District.

HERBERT S. DE SOLLAR, Plaintiff, *vs.* WILLIAM B. HANSCOME, Defendant. } Answer of Herbert S. De Sollar to the Cross-bill of said William B. Hanscome.

The said Herbert S. De Sollar, now and at all times hereafter reserving all manner of benefit, exception, and advantages to himself of the many errors and insufficiencies in the cross-bill herein contained, for answer to said cross-bill or so much and such parts thereof as he is advised it is material for him to make answer unto, answering, says—

That it is true that he, the said Herbert S. De Sollar, exhibited in this honorable court his bill of complaint as set forth in
29 said cross-bill, and that the said William B. Hanscome hath appeared and put in his answer thereto, and admits that the said Hanscome *in* the owner of the real estate mentioned in said cross-bill as well as in the original bill herein, and admits that the said J. J. Henry was by the said Hanscome authorized to receive from persons desiring to purchase the said real estate offers of purchase, and report the same.

And, further, upon his information and belief avers that the said Henry was authorized also to enter into a contract for the sale of said property; admits that the said Hanscome wrote to said Henry the various letters mentioned in the said cross-bill, and that the said Henry executed, together with this defendant, De Sollar, the written memoranda of agreement set forth in the said cross-bill, but upon his information and belief denies that the said letters were not authority and did not contain authority to said Henry for the making of said writing or memoranda of agreement; and further likewise denies that said Henry had not, at the time of the making of said writing or memoranda of agreement, lawful authority to make or sign the said writing on behalf of said Hanscome.

And, further answering, said De Sollar admits that he caused the letters and memoranda of agreement aforesaid to be recorded in the recorder's office of Arapahoe county, Colorado, and denies that he did the same without right or authority; denies that it is not true that he, the said De Sollar, agreed with the said Henry to pay the sum of five thousand dollars ($5,000.00) for the said lots mentioned in the said original bill and cross-bill herein; denies that he, the said De Sollar, did not agree to pay therefor a greater sum than nine thousand four hundred and fifty dollars ($9,450.00); denies that it is not true, as recited in said pretended agreement, that the said De Sollar, on the day of the date thereof, paid to said
30 Henry the sum of two hundred dollars ($200.00); denies that any of the matters aforesaid alleged in the said cross-bill were

or that any one of them was, fraudulent or in any respect a fraud upon the said Hanscome, and that the said Hanscome in any manner suffered on account thereof.

And the said De Sollars, defendant to the said cross-bill, answering, alleges the truth to be that the said Henry, upon the sale of the aforesaid property, became entitled to the sum of about two hundred dollars as his compensation for the making of said sale, and that to induce this defendant to close the agreement for the purchase of said lots at a price which was then considered high the said Henry agreed to contribute fifty dollars ($50.00) out of his compensation on commission by reducing his charge for such services to the extent and amount of fifty dollars ($50.00) of his charge against the said Hanscome for such services; all of which the said Henry did by receiving one hundred and fifty dollars ($150.00) in cash and giving to said De Sollar a receipt for two hundred dollars ($200.00) and charging himself, the said Henry, with two hundred dollars ($200) in his account with the said Hanscome, the same as if that whole sum in reality had been paid, so that no injury or damage resulted to said Hanscome in any manner whatsoever by the said arrangement. The said arrangement was, as this defendant is informed and believes, to all intents and purposes a payment to said Henry for the said Hanscome of the full sum of two hundred dollars ($200).

And, further answering the said cross-bill of this defendant, the said De Sollar admits that of the said two hundred dollars ($200.00) the sum of fifty dollars ($50.00) was by the said Henry forwarded to the said Hanscome and was by the said Hanscome received, but upon information and belief denies that he received the same at Denver on or about the 12th day of March, 1888, but, on the con-
31 trary thereof, avers upon his information and belief that said Hanscome received the same before he left Wichita and on or about the 9th or 10th day of March, 1888; denies that about the same day the said Hanscome offered to return the said money to the said De Sollar, but admits that on or about the 21st day of March, 1888, he, the said Hanscome, after having fully ratified the agreement entered into by the said Henry, as is hereinafter more fully stated—he, the said Hanscome, undertook to rescind the said contract and then offered to return the said fifty dollars ($50.00) and no more out of the whole amount which had been paid by this defendant to said Henry as agent for said Hanscome.

And, further answering, the said De Sollar denies that there was, either upon his part or the part of any other person, any concealment of the truth in respect to the amount agreed to be paid by him, the said De Sollar, for the said lots or the amount of cash actually paid by said Henry at the time of the making of the said writing; and, further, upon his information and belief denies that the causing of the said letter and agreement to be recorded or any other act of this defendant in said cross-bill in connection therewith were fraudulent or a fraud upon the said Hanscome, or that the same or any thereof were done for the purpose of enabling him, the said De Sollar, to obtain the title of said Hanscome to said lots for a less sum than he, the said Hanscome, was willing to accept

therefor or upon conditions more favorable to said De Sollar than the said Hanscome was willing to make, or to embarrass the said Hanscome in the sale of said property to any other person.

And further upon his information and belief denies that the record of the said agreement or the said agreement itself has the
32 effect of embarrassing the said Hanscome in the enjoyment or sale of his said property or tend to depreciate their value or constitute a cloud upon his title thereto, and likewise denies that the same should be removed, but, on the contrary thereof, avers that the said agreement was and is a good and valid agreement, binding upon the said Hanscome and entitling this defendant, the said De Sollar, to a deed for the said property for the reasons and upon the allegations of the bill of complaint herein exhibited by him, the said De Sollar as aforesaid, as well as upon the facts, statements, and allegations in this answer contained.

And, further answering, this defendant saith that subsequent to the making of the said agreement in said cross-bill set forth and on, to wit, about the 12th day of March of that same year, the said Hanscome was by the said Henry and by the said De Sollar fully advised of all and singular the matters and things relating to the execution of said agreement and respecting the entire transaction, and, being so fully advised, he, the said Hanscome, thereafter and about the date last aforesaid fully ratified and confirmed said agreement, notwithstanding the slight departures therein contained from the authority given by the said defendant to said Henry by the letters aforesaid.

And your orator further avers that said ratification was on or about the 10th day of May, A. D. 1889, found and determined by the verdict of a jury and the judgment of this honorable court in a certain action at law then pending in said court, wherein the said Hanscome was plaintiff and he, the said De Sollar, was defendant, in which an issue was made, tried, and determined as to whether or not there was such ratification, and such ratification was determined in favor of him, the said De Sollar, and such ratification found to have been made.

And said De Sollar, further answering, denies all and all manner of unlawful combinations wherein he hath — by the said
33 cross-bill charged; without this, that there is any other matter or thing in the said cross-bill contained material or necessary for him, the said De Sollar, to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things he, the said De Sollar, is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be as to the said cross-bill hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

M. BENEDICT,
A. C. PHELPS,
Complainant's Solicitors.

STATE OF COLORADO, } ss:
Arapahoe County, }

On this seventh day of October, A. D. 1889, personally appeared before me the above-named Herbert S. De Sollar and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and as to such matters he believes it to be true.

H. S. DE SOLLAR.

Subscribed and sworn to before me this seventh day of October, A. D. 1889.

[SEAL.] CHARLES A. STOKES,
Notary Public.

My commission expires November 21st, 1892.

(Indorsed:) Cross 2437 bill. In the U. S. circuit court, district of Colorado. In equity. Herbert S. De Sollar *vs.* Wm. B. Hanscome. Answer to cross-bill. Filed Oct. 7, 1889. William A. Willard, clerk. Benedict & Phelps, for complainants.

34 And afterwards and on, to wit, the 4th day of November, A. D. 1889, came again William B. Hanscome, by his solicitor aforesaid, and filed in said court and in said cause his replication to the answer to cross-bill heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

Replication to Answer to Cross-bill.

United States Circuit Court for the District of Colorado.

HERBERT S. DE SOLLAR }
vs.
WILLIAM B. HANSCOME. }

Replication to the answer of the said Herbert S. De Sollar to the cross-bill of the said William B. Hanscome.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the answer of the said Herbert S. De Sollar to the cross-bill of the said William B. Hanscome, for replication thereunto saith that he will aver and prove his said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said Herbert S. De Sollar is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall

direct, and humbly prays as in and by his said cross-bill he hath already prayed.

J. A. BENTLEY,
Solicitor for William B. Hanscome.

Dated November 4, 1889.

35 DISTRICT OF COLORADO, } ss:
County of Arapahoe, }

William B. Hanscome, first being duly sworn, deposes and says that he is the complainant in the cross-bill filed in this cause against Herbert S. De Sollar, and in the foregoing replication; that said replication is true to the best of his knowledge and belief.

W. B. HANSCOME.

Subscribed and sworn to before me November 4, 1889.
[SEAL.] WILLIAM E. WHITE,
Notary Public.

(Indorsed:) Cross 2437 bill. United States circuit court, district of Colorado. Herbert S. De Sollar *vs.* William B. Hanscome. Replication to answer to cross bill. J. A. Bentley, solicitor for William B. Hanscome. Filed Nov. 4, 1889. William A. Willard, clerk.

36 And afterwards and on, to wit, the 14th day of October, A. D. 1889, came John W. Webster, Esq., an examiner in chancery of this court, and filed in said court and in said cause his report of the testimony taken before him in said cause.

And the said report is in words and figures as follows, to wit:

Examiner's Report.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

HERBERT S. DE SOLLAR, Claimant, }
vs.
WILLIAM B. HANSCOME, Defendant. }

Testimony of witnesses taken before me, John W. Webster, one of the examiners in chancery, circuit court United States, under and by virtue of 67th rule of the Supreme Court of the United States and amendments, and also by consent of counsel for that purpose in a case now pending and undetermined in the said circuit court of the United States, wherein Herbert S. De Sollar is claimant and William B. Hanscome is defendant, on behalf of the claimant, at my office, 10 McClintock block, in the city of Denver, 27th day of November, 1889, at the hour of 8 p. m.

37 Present: A. C. Phelps, Esq., who appears for claimant, and J. A. Bentley, Esq., who appears for defendant.

And thereupon Mr. H. S. DE SOLLAR, the claimant himself, was sworn and testified as a witness in his own behalf, and, being duly sworn, deposed and testified as follows:

Q. You are the claimant in this case?
A. I am.
Q. Are you acquainted with Mr. Hanscome, the defendant?
A. I am.
Q. When did you first meet him?
A. On the 13th day of March, 1888.
Q. Where?
A. At my office door, which is situated in the Opera House block, fourth floor, room 59.
Q. What took place between you and Mr. Hanscome at that time?
A. Well, I was first informed by one of the students that there was a gentleman named Mr. Hanscome at the door who wished to see me. I went to the door. Mr. Hanscome asked if this was Mr. De Sollar, and I told him it was. He then introduced himself as Mr. Hanscome, from Wichita, and asked me if I was the gentleman who had bought some property from his agent, Mr. Henry. I told him I had. He said he had received word from Mr. Henry—received a letter, I think he stated, something concerning a draft for $50—just before he left Wichita informing him of this sale. He asked me if I could comply with the terms of the contract, as he would like to leave the city in a few days and he would like to have the matter arranged as soon as possible. I told him I was ready and had been since the contract was made, just as soon as the abstract for the property was passed upon. With that he handed me the abstract, and in glancing over it I saw that it was not brought up to date. I called his attention to it and told him that it was customary to have the abstract brought up to date and I should
38 like to have him comply with the custom. He took the abstract and said he would have it brought up to date and either deliver it or send it to me by his agent.
Q. What time of day was this conversation?
A. In the morning about 9. I think between the hours of 9 and 10, as near as I can remember.
Q. Was there any reference made in the conversation to Mr. Henry, or Judge Henry, as he is called sometimes?
A. Yes; I think he did in the conversation say he had just come from Judge Henry's office, who had told him of the particulars of the sale—something to that effect—and that the Judge had informed him what a trouble he had in making the sale with me; that he had to shave a part of his commission; that he only received $150.
Q. Did he take the abstract away with him?
A. He did.
Q. Have you repeated about all that transpired at that meeting?
A. So far as I can recall to mind.
Q. What, if anything, did he say to you about the contract that

Mr. Henry and you had made, as to whether it was satisfactory or unsatisfactory?

Defendant objects to the last question as incompetent, immaterial, and irrelevant.

A. He said nothing about it being satisfactory or unsatisfactory, any more than he requested that he would like to have the matter fixed up in a reasonable time; that he did not expect to be in the city only a few days, and I told him I was ready to comply as soon as the abstract had been passed upon.

Q. When did you see him next?

A. The next time I saw Mr. Hanscome was on the 16th of March.

Q. Did you not in the meantime receive the abstract again?

A. I did receive the abstract from Mr. Henry on the 15th,
39 bringing them to my office brought up to date.

Q. After you received the abstract, what did you do with them?

—. I immediately took them to my attorney, Mr. Melone, of Steel and Melone, whose office was at that time in the same building.

Q. When?

A. On the morning of the 15th.

Q. How long after you received them from Mr. Henry?

A. Immediately.

Q. Where did you meet Mr. Hanscome on the 16th?

A. I met Mr. Hanscome on the 16th coming across the street from the St. James, and I stopped him and told him——

Q. What time of day was it?

A. Between the hour—well, it was in the morning; probably 10 o'clock.

Q. What transpired between you on the occasion?

A. I informed him that I had received a report from my attorney and that before he gave me his opinion in writing he would like to talk with him in reference to a certain receipt that had been filed against the property.

Q. What took place then?

A. We immediately went to Mr. Malone's office.

Q. What occurred between yourself and Mr. Malone and Mr. Hanscome when you were all three together?

Defendant objects to the question as incompetent, irrelevant, and immaterial.

A. Mr. Melone called Mr. Hanscome's attention to a receipt for $25 that was filed against the property by Mr. Chittenden and given by Dubbs. He said it was a small matter, but it should be removed. Mr. Hanscome became indignant, and said it was
40 nothing but a piece of blackmail, and that if I wanted the receipt removed I should have to remove it at my own expense.

Q. Was that the end of the conversation?

A. Yes, sir; Mr. Melone tried to prevail upon him to have it removed—to remove the receipt—in my behalf, but the more he

pleaded the more indignant Mr. Hanscome became, and repeated that if I wanted it removed I would have to do it at my own expense.

Q. Can you fix any other time when you had an interview with Mr. Hanscome?

A. Yes; several of them.

Q. What was the next?

A. The next interview I had with Mr. Hanscome was on the 17th of March.

Q. This was the same month?

A. Yes; the same month, between the hours of 4 and five o'clock.

Q. Where?

A. At the corner of 16th and Curtis Sts.

Q. What occurred on that occasion?

Defendant objects to the question as incompetent, irrelevant, and immaterial.

A. I had been looking for Mr. Hanscome for some ten or fifteen minutes, as I understood he was going to leave the city, and at the request of my attorney, Mr. Benedict, I took a witness, a gentleman by the name of Mr. Kilbourn, to listen to a conversation that would take place if I could find him.

Defendant objects to all that part of the witness' answer which has already been given on the ground that it is not responsive and is immaterial, irrelevant, and incompetent.

Q. Now, answer the last question and state what occurred
41 between you at this meeting.

A. I told Mr. Hanscome that I had seen Mr. Chitenden, and that I had made arrangements with him to get a quitclaim from him for that receipt, and that if he would not remove it I should do it at my own expense; that to go ahead and get his deed ready; that I was ready and had been and I was anxious to have this matter closed up. He then informed me that he had left the matter with his attorney, Mr. Bentley, and went over to the St. James hotel.

Q. Who was present at the interview?

A. A gentleman by the name of Montie Kilbourn.

Q. Up this time, in your interviews with Mr. Hanscome, what, if anything, had he ever said about the sale being off or about the authority or want of authority of Mr. Henry or anything of that kind?

Defendant objects on the ground that the question is leading, and that it — incompetent, irrelevant, and immaterial.

A. He had never said anything about the sale being off or about not ratifying Mr. Henry's actions; on the contrary, he had money which had been paid; he said nothing.

DEFENDANT: I now object to all that part of the answer except the last as not responsive—he said nothing; all the rest is objected to.

Q. Did you see him subsequently to the 17th of March? If so, when and where?

A. I saw him on the 20th of March; he called at my office between the hours of 4 and 5 o'clock.

Q. Not four or five o'clock in the morning?

A. In the evening. I know that, as I had just recently dismissed school, after four o'clock.

42 Q. State what transpired on that occasion.

Defendant objects to the question as incompetent, irrelevant, and immaterial.

A. He said that he called; that he was going to leave the city, and he insisted upon me giving three letters which I had in my possession as personal property of his which he had written to Mr. Henry, his agent. I told him that I should have to keep those letters; that I should probably have to use them at some future time; that if he would not complete his part of the contract that was made from those letters I should have to take the advice of my counsel, as I had rights that must be respected; he seemed arbitrary and very contrary in the matter and would do nothing more than say he had left the matter with his attorney. I tried my utmost to prevail upon him to complete his part of the contract, as I told him that I made a contract in good faith with his agent, Mr. Henry, and paid money upon it, and that I had been ready from the time that the contract was made to complete my portion of it, and that I insisted upon him doing the same.

He told me that he had left the matter with his attorney. I then told Mr. Hanscome—said I, Mr. Hanscome, I am in no condition to buy a lawsuit and it is not my wish to buy one; on the other hand, it is not my desire to blockade your property or any one's property or interfere with the sale, but I have rights in the matter that must be respected, and my counsel, Mr. Benedict, informs me that if you do not complete your part of the contract I shall have to have my rights respected and file those papers against the property for my own protection. He would do nothing. I then told him, said I, Mr. Hanscome, I will do this—I will make this concession; still I should prefer to rely upon

43 the merits of the original contract. I will allow this property to be sold, I will allow this Chittenden receipt to be removed, if it becomes necessary, and I will allow the agent's commission to be deducted. Should I be instrumental in selling it myself I would charge nothing for my services. After the property is sold, after the Chittenden receipt has been removed, and the agent's commission has been paid, what is left net after deducting the original $5,000, the amount I had contracted with you, I would be willing to divide equally. I do this to avoid a lawsuit as a settlement. I do it by way of compromise, as I am in no condition to have a lawsuit, and it was not my wish to have anything but a peaceable settlement. He jumped at the conclusion. "Will you put that in writing?" which I did. We both signed it. It was then nearly dusk, and he said he had an engagement that evening and that he would

leave the contract with me, and in the meantime I could write a duplicate and in the morning he would call and we would compare the duplicate and then we would each have a copy, which I did; a copy of which I have in my possession.

Q. Now, what occurred after that?

Defendant objects, the same as to the last question.

A. He called the next morning between the hours of 11 and 12, close to noon. This was on the 21st. He asked if I had the article with me that we had both signed the night before. I told him I had. He requested to see it and I let him have it, and I told him, "By the way, I have written off a duplicate and you can look over the original while I read the duplicate," which I did, and he remarked that it tallied exactly, with the exception of one or two slight omissions—words omitted. I then told him, "You can take and sign the duplicate and take either copy you choose." He said,

44 "No. I have been consulting with my attorney, Mr. Bentley, and it makes certain concessions that I object to and I shall not sign it." Says I, Very well; if that is the way you feel in the matter let me have it and I shall erase my name from it; which I did. I then told him—said I, "Hanscome, I will rely now upon the merits of the original contract and I shall have no more child's play, as this has been." He left. The duplicate, I might state, I have in my possession.

Q. Did you see him again that day?

A. I did. He called that day in the afternoon, I think it was between the hours of 4 and five, with an article that he and his attorney, Mr. Bentley——

Q. What occurred when you came together that afternoon?

Defendant objects, the same as to the last—that is, on the ground that it is incompetent, immaterial, and irrelevant.

A. He brought an article of paper around that he said was written by his attorney and requested me to sign it. I told him that I should not sign it. I told him that I should sign nothing; that I should now rely entirely upon the original contract; that I had made one concession and he objected, and now I should stand firm upon the original contract.

Q. Did you meet him again that same day?

A. I did.

Q. What time, where, and who was present?

A. He called again on the evening of the 21st of March, close to eight o'clock—between the hours of half past 7 and 8. I was informed by a student that Mr. Hanscome was at the door and wished to see me. I went to the door.

Q. What occurred then?

Defendant objects on the ground that it is incompetent, irrelevant, and immaterial.

A. He introduced me to his son-in-law, a gentleman by the

45 name of Herbert. Mr. Hanscome remarked to me that he was going to leave the city and that there was $50 in gold which

he took from his pocket and offered to me, with the remark that "I demanded from you three letters and the contract that you have in your possession." I told him—said I, "Hanscome, you must think that I am a darned fool. I contracted with Mr. Henry in good faith. I have paid him a much larger amount than that." He then remarked that that was all he received from Henry, and I would have to look to Henry for the balance. I told him—said I, Hanscome, you have tried to euchre me out of this property from the start. I made a contract with your agent, which you have ratified by your action, in good faith. I have paid money in good faith, and I have been ready from the date of the contract to have this matter consummated, and I insist upon your getting your deed ready. I am ready and have been and want this matter closed immediately.

Q. Did you take the money?

A. I did not.

Q. Was that the end of the conversation?

A. Yes, sir. He left then; said he would have nothing more to do with it; that he had left the matter with his attorney.

Q. Was that the last time you saw him?

A. I saw him again on the 23rd, in his room at the St. James hotel.

Q. What occurred then?

Defendant objects same as to the last.

A. I took a gentleman, an acquaintance of mine, round to see if he was willing or if he was ready to complete his part of the contract, and said that I was ready and want the matter closed up.

DEFENDANT: I object to that answer. It is not responsive.

Q. State whether or not, in any conversation you ever had
46 with Mr. Hanscome up to the last one you mention and including that, if Mr. Hanscome ever denied or questioned Mr. Henry's right to act for him or the correctness of what he had done.

DEFENDANT: I object on the ground that it is leading, incompetent, immaterial, and irrelevant.

A. He did not.

Cross-examination by Mr. BENTLEY:

Q. How are you able to fix it, in that you first saw Mr. Hanscome on the 13th day of March, 1888, rather than on the 12th or the 14th?

A. I know that Mr. Hanscome, in his last letter, stated that he would be here on or before the 10th of March. I know it was some two or three days, because I had been round to Mr. Henry's office two or three times, and he told me the last time I was there that Mr. Hanscome had been in the office and expressed some surprise at his not calling on me, and I know it was three days after the 10th. We did not look for him before the 10th and he did not arrive before that time.

Q. When was it that you first expected him here on the 10th?

A. I expected him here on the 10th the very day we went into writing.

Q. That is to say, the third day of March, when you went into writing?

A. I saw a letter stating that he would be here on or before the 10th. I had seen Mr. Henry. He lived on the hill and I had frequently seen him, and he had informed me that he had heard nothing to the contrary, and we had every reason to think
47 that Hanscome would reach here according to the information given to his agent in his last letter.

Q. Was that the letter which you had seen on the 3rd?

A. There was no letter seen on the third; the contract was made.

Q. You have just stated that you had on that day, on the day the writing was drawn, heard from Mr. Hanscome, stating that he would be here on or about the 10th?

A. Yes, sir; about the 10th of March.

Q. Between the 3rd and 10th you frequently saw Mr. Henry and talked about Mr. Hanscome's coming?

A. I do not know positively. I saw Mr. Henry on the street; he said nothing about receiving any word from him to the contrary of his last letter.

Q. Did you and Henry talk at all about Hanscome's coming between the 3rd and the 10th?

A. I do not know that we did.

Q. Then you do not remember of having any conversation with Henry about Hanscome coming between the 3rd and the 10th?

A. Relative to the contract? No, sir.

DEFENDANT: Will the reporter read the question the second time? That is no answer to the question.

Q. Then you do not remember of having any conversation with Henry about Hanscome coming between the 3rd or the 10? I ask you whether you remember of having had any conversation with Mr. Henry between the 3rd and 10th of March about Hanscome's coming home on the 10th.

A. I do not remember having any conversation whatever on the 10th, if that is what you want.

48 Q. Did you call on Mr. Henry on the 10th to inquire whether Mr. Hanscome had arrived?

A. I do not think I did.

Q. Do you know what day of the week the 10th was?

A. I am under the impression it was on Sunday—Saturday or Sunday. I know I did call one day after the 10th had expired.

Q. What answer did you get?

A. I got an answer from Judge Henry that Mr. Hanscome had been in the office; that he had informed him of the sale and told him what a hard time he had to sell to me; that he only received $150; that he had to divide his commission with me and expressed some surprise at his not calling; said he was not going to remain

in the city but a short time and would like to have the matter fixed up if possible before the 24th.

Q. Did not Mr. Henry tell you that Mr. Hanscome had been in the office that very morning?

A. He said that he had been in the office. I do not know that he mentioned the particular time of day. I know that it was in the evening I called—after my office hours.

Q. Did not Mr. Henry tell you that Mr. Hanscome had been in the office that very day?

A. I think he did. I know he said he had been in the office.

Q. Who was present while you and Mr. Henry had this conversation that you memtion?

A. Well, there were two or three gentlemen who had desks in the same room. I did not notice particularly who was present.

Q. Was any of them listening to this conversation?

A. Not to my knowledge.

Q. Did Mr. Henry tell you in that conversation what he
49 thought Mr. Hanscome wanted to see you about?

A. He did not.

Q. Did you see Mr. Henry that day before you called at his office on this occasion?

A. I did not.

Q. You have stated that in your conversation with Mr. Hanscome on the 20th, that you told Mr. Hanscome that he had been trying to euchre you out of the sale from the beginning. What lead you to make that statement to him?

A. Well, the fact of his not complying with his contract; of course, neither one of us could act; it was not expected of me to act until we could have a report on the abstract, and just as soon as we had a report on the abstract he wanted to differ from his contract then and there by telling me that if I wanted to have that property free from all receipts I would have to remove them at my own expense, and I did not like his actions from that time on.

Q. From that time on Mr. Hanscome did not display any desire to carry out the arrangement, did he?

A. After the 16th he did not show any inclination to carry out the arrangement. On the 16th he remarked that if——

DEFENDANT: Answer my question.

A. On the 16th he did show a willingness.

Q. What did he say on the 16th that expressed a willingness to carry our the arrangement?

A. He remarked to Mr. Melone that if I wanted the receipt removed I should have to remove it at my own expense; that it was only a piece of blackmail, and that he would not remove it.

Q. Were you present at that time?

A. I was.

Q. Did you agree to remove the receipt at that time?

A. I did not; did not disagree to remove it. I did not express myself then, because my attorney, Mr. Melone, was talking
50 for me. I remained silent.

Q. Mr. Melone insisted for you that Mr. Hanscome should take it off, did he not?

A. He said it was his place to remove it according to the contract that he had ratified.

Q. You say on the 17th of the month, by direction of your attorney, you met Mr. Hanscome and informed him that you had made an arrangement with Mr. Chittenden in relation to the removal of the receipt, and tha tif he (Hanscome) would not remove the receipt you had decided to do it?

A. When you mention my attorney, Mr. Benedict; yes, sir.

Q. Had you made any arrangement with Mr. Chittenden to remove the receipt before seeing Mr. Hanscome?

A. I had; yes; that very day.

Q. You had made the arrangement with Mr. Chittenden?

A. That is, so far as concerning the amount he would require to have it removed. I was introduced to him by Mr. Henry.

Q. Did you tell Mr. Hanscome the arrangement you had made?

A. Nothing more than that I had met Mr. Chittenden and I had made arrangements with him to get a quitclaim, and that if he did not remove the receipt at his expense I would.

Q. Did you tell Mr. Hanscome what arrangement you had made with Chittenden?

A. I merely told him I had made arrangements; I did not tell him what arrangements; did not enter into detail with him at all.

Q. What time in the morning did you say it was that Mr. Henry came to you on the 15th with the abstract?

A. I think it was between the hours of 9 and 10 o'clock on the 15th; quite positive.

H. S. DE SOLLAR.

Subscribed and sworn to before me this 27th day of November, 1889.

JOHN W. WEBSTER, *Examiner.*

51 Claimant produces Mr. MONTIE KILBOURN, a witness in behalf of claimant, who, being duly sworn, testifies as follows:

Direct examination by Mr. PHELPS:

Q. What is your name?
A. Monte Kilbourn.
Q. Where do you live?
A. Loveland, Colorado.
Q. Are you acquainted with Mr. De Sollar?
A. I am acquainted.
Q. Do you know the plaintiff, Mr. Hanscome?
A. I know him—when I see him, that is.
Q. How long have you been acquainted with Mr. De Sollar?
A. Since a year ago last November.
Q. Where were you and how were you engaged in March, 1888?
A. I was attending school at his place.

Q. At Mr. De Sollar's commercial school?

A. Yes, sir.

Q. Do you remember of meeting Mr. Hanscome with Mr. De Sollar during that month?

A. I do.

Q. Whereabouts?

A. On the corner of 16th and Curtis street-.

Q. Do you remember about what time in the month it was?

A. It was about the 18th of the month.

Q. How do you fix that date?

A. I fix that date by having to copy a paper that was drawn up on the 20th of March. I copied the paper on the 21st—compromise contract between the two—Mr. Hanscome and Mr. De Sollar. I know this meeting was two or three days previous to that copying of the contract.

Q. Now state what took place at that meeting on the corner of 16th and Curtis street- between De Sollar—Professor De Sollar—and Mr. Hanscome.

A. Professor De Sollar stopped Hanscome on the street and
52 informed — he had talked with Chittenden. He was willing to remove that receipt if he would not, and he wanted him to make out the deed at once, as he was ready, and had been for several days, to pay the money.

Q. I wish you would state about what time of day it was you met.

A. Between the hours of four and five in the evening.

Q. What was the first thing said by the parties when you came together?

A. Mr. De Sollar told him he had concluded to remove the Chittenden receipt himself.

Q. What was the first thing?

A. The first thing I remember was hallowing at him by the name of Hanscome, stopping him as we were coming up behind him.

Q. Where did you come from?

A. We had come from the St. James hotel over to Judge Henry's office; when we were there saw him coming up the street—coming up 17th on the corner of Curtis.

—. You had been looking for him?

A. Yes, sir.

Q. How long were you together there?

A. I should say four or five minutes.

Q. What did Mr. Hanscome say when he told him he was ready?

A. He told him he had left the matter in the hands of his attorney and the sale was off, and turned and left us.

Q. Did he say anything about giving back any money?

A. No, sir.

Q. Did he say anything about Mr. Henry or about what Mr. Henry had done?

A. No, sir.

Cross-examination by Mr. BENTLEY:

Q. How long had you been with Mr. De Sollar on that occasion?
A. I had been with him since about 9 o'clock of that day.
Q. Had you been along with De Sollar when he was hunt-
53 ing for Hanscome?
A. I had at the request of De Sollar.
Q. To hear what would be said?
A. Yes, sir; I believe that was the object.

MONTIE KILBURN.

By the consent of the counsel the further taking of testimony is hereby continued until Saturday evening, the 30 day of Nov., 1889, at 7.30 o'clock.

JOHN W. WEBSTER, *Examiner.*

Subscribed and sworn to before me this 30th day of November, A. D. 1889.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Saturday evening at 8 o'clock p. m., counsel for the respective parties being present.

Thereupon plaintiff produces Judson P. Etheridge as a witness in his behalf—

It being now understood that each and every question propounded to the witness shall be considered as objected to as being irrelevant, immaterial, and incompetent, this being done to avoid the necessity of objecting severally to each question.

JUDSON P. ETHERIDGE sworn.

Direct examination by Mr. PHELPS:

Q. Where do you live?
A. In the city of Denver.
Q. How long have you lived there?
A. Two years.
54 Q. In what business are you engaged?
A. Real-estate business.
Q. How long have you been engaged in that business?
A. A year and a half.
Q. Have you ever seen or do you know the location of the property mentioned here on this trial, in Park Avenue addition, on Clarkson between Colfax and 16th street?
A. Yes, sir.
Q. Are you acquainted with the value of property in that vicinity?
A. Yes, sir.
Q. Is property more valuable now or less valuable than it was in March, 1888?
A. More valuable.
Q. About what per cent. more?
A. About 75 per cent; 75 to 80.

Q. What is its value now as compared with last December, the first of last December?

A. These three particular lots, you mean?

Q. Yes.

A. I think possibly the lots would be worth, the three lots——

Q. I mean just give me comparatively whether they are worth more now than last December.

A. I think they are some.

Q. Much?

A. Not a great deal.

Q. Is there any particular cause which operated to enhance the value of property in that locality subsequent to the third of March last?

A. Yes; I think there was.

Q. How far are these lots from the cable road?

A. About three-fourths of a block.

Q. Was the cable road running out there on the third of March last?

A. I believe it was.

Q. I don't mean last March; but a year ago?

55 A. A year ago? No; it was not.

Q. What effect did the fact that the cable road was to be built, when that fact became assured, out Colfax avenue, have upon this property and other property in that locality?

A. It very materially increased its value.

Q. Do you know any other cause that would operate to increase values in that locality?

A. A large amount of building being done in that locality.

Q. A good deal of building?

A. Yes, sir.

Q. What, in your judgment, is the value of this property at the present time?

A. About eight thousand dollars.

Q. What was it worth in your judgment last December—the first of December; about the 7th?

A. A little over, perhaps.

Q. You say a little over?

A. Possibly; yes, sir.

Q. When was the first time you saw Mr. Hanscome?

A. It was in March, 1888.

Q. About what time?

A. Well, my recollection is it was shortly before the middle of the month.

Q. Where?

A. In my office.

Q. Did you have any conversation with him or hear any conversation respecting the sale of this property that had been made to Mr. De Sollar?

A. I heard conversation.

Q. Who was the conversation with?

A. Between Mr. Henry and himself.

Q. Between Mr. Henry and Mr. Hanscombe?

A. Yes, sir.

Q, What was said by Mr. Hanscombe?

A. I did not know the gentleman at the time he came in; but shortly after he came in he produced an abstract or abstracts, I could not say which; his back was turned. He made a re-
56 mark to the judge to the effect that here were the abstracts of the Clarkson-street lots; handed them to the judge; laid them on the table—desk. The judge replied that he didn't have anything to do with the abstracts now—the abstract. He wanted to get them brought down and taken to Mr. De Sollar, and Mr. Hanscombe carried them out of the office with him.

Q. He took them away?

A. Yes, sir.

Q. Do you remember any other conversation at the time?

A. I have a recollection of making a remark about having received some money. I believe that was the first he said, and not knowing anything about it at that time.

Q. About receiving a letter?

A. I can't say as to that. As quick as he mentioned the Clarkson-street lots I was interested then. Then I listened to the conversation.

Q. You don't remember where he said he had received the money?

A. Before he left home. That is the recollection I have.

Q. Where else did he say?

A. I don't think there was anything else said at the time. I think very shortly he took the abstracts and went out of the office.

Q. Do you remember about what time of day it was?

A. I do not. I would guess at it if I undertook to tell. My impression is that it was in the forenoon some time; about ten o'clock. That is my impression of it.

Q. This question you speak of Mr. Henry. Is that J. J. Henry, sometimes called Judge Henry?

A. Yes, sir. He and I shared the same office.

Q. I will ask you if you, subsequent to that time, ever heard conversa- between Mr. De Sollar and Judge Henry respecting the closing up of this deal on Clarkson.

(Objected to.)

A. Yes, sir.

Q. State what that conversation was.

57 Objected to as immaterial & incompetent.

Mr. PHELPS: There is enough now to show that he was an agent to receive any propositions De Sollar had to make in regard to being ready to close it up. All I expect to show is Hanscome going to Judge Henry and submitting to him that he was ready now to conclude this contract, and I think that there is enough here to show that Henry was certainly an agent to the extent of making it his duty to communicate with Mr. Hanscome and conclude the trans-

action. Of course, it is a question for the jury to pass upon, but I think that there is testimony which tends to support it.

The principal was here in the city himself; there was no reason for an agent at all at that time.

Cross-examination of Mr. ETHERIDGE.

By Mr. BENTLEY:

Q. Mr. Etheridge, had you ever seen Mr. Hanscome before the time you mentioned, when he came into the office?

A. No, sir; not that I recollect of.

Q. I wish you would state what was the first thing you heard him say and to whom he said it.

A. The first thing that I have any recollection of is a remark he made to Mr. Henry to the effect that he had received some money just before leaving home. That is the first thing I have any recollection of.

Q. State what he said about it. I want the words of Mr. Hanscome as near as they can be repeated.

A. Whether he said I received your letter—I am unable to give it in his words.

Q. As near as you can.

A. I received your draft just before taking the train for Denver.

Q. That is as near his language as you can remember?

A. Yes, sir.

58 Q. What did Mr. Henry say?

A. Mr. Henry said, in about these words, that he was glad to see him; that they thought they could arrange the matter now while he was here—in substance.

Q. What did Mr. Hanscome say?

A. Mr. Hanscome produced the abstract or abstracts—I could not say whether there was one or two—and says, Here are the abstract or abstracts; and Mr. Henry in substance said that he would not have anything to do with the abstracts now. He took them and looked them over or looked the papers over, and says to Mr. Hanscome, You want to take these to the abstract office and have them brought up to date; take them to Mr. De Sollar; and Mr. Henry said something about his having made stren-ous efforts to effect the sale on the terms Mr. Hanscome wanted, and Mr. Hanscome took the papers with him and departed.

Q. Did Mr. Henry tell Mr. Hanscome where he would find De Sollar?

A. I do not recollect.

Q. Did Mr. Henry show Mr. Hanscome the contract or any paper?

A. My recollection is that he did not, but Mr. Hanscome's back was turned to me and I could not see.

Q. How long was Mr. Hanscome there?

A. Not but a very short time.

Q. Did they shake hands?

A. I believe they did; yes, sir.

Q. Did Mr. Henry express any surprise at the appearance of Mr. Hanscome there?

A. I don't think he did; no, sir.

Q. Are you still officing with Mr. Henry?

A. No, sir.

Q. When did you leave there?

A. Judge Henry left the office before I did.

Q. He went out and left you there?

A. Yes, sir.

Q. When was that he went out?

59 A. I think it was some time in October or November last. I could not say positively.

Q. Now, what, if anything, fixes in you- mind the language or the remark of Mr. Hanscome when he first came in the office?

A. Well, I never knew Mr. Hanscome at all, and when he appeared in the office I did not know who he was. Mr. Henry and I had talked the matter of this sale over and I understood that Mr. Hanscome was a resident of Wichita, and when he made the remark that he had received a communication from the Judge or his draft before leaving Wichita I immediately surmised it was Mr. Hanscome, and pricked up my ears and remembered the remark.

Q. And that sort of struck your attention at the time?

A. Yes, sir.

Q. Now, are you sure that Mr. Hanscome said that he received it before he left Wichita?

A. I am quite positive of it.

Q. Did not Mr. Hanscome say I received your letter with the draft?

A. No; I am very sure he said before he left Wichita; otherwise I would not have paid much attention—would not have recognied who he was; that is what fixed that in my mind.

Q. That is all unless you can state the date. Can't you steta more particularly the day on which this took place?

A. I cannot.

Q. The day of the week?

A. No, sir; I cannot. I can fix the approximate time only.

Q. You can only say of it that it was shortly before the middle of the month?

A. Yes, sir.

JUDSON P. ETHERIDGE.

Subscribed and sworn to before me this 4th day of December, A. D. 1889.

JOHN W. WEBSTER, *Examiner.*

60 Thereupon the plaintiff produces F. D. Morse as a witness in his behalf—

It being now understood that each and every question propounded to the witness shall be considered as objected to as being irrelevant, immaterial, and incompetent—

This being done to avoid the necessity of objecting severally to each question.

F. D. MORSE sworn.

Direct examination by Mr. PHELPS:

Q. Are you acquainted with Mr. Hanscome?
A. I never saw him before until I saw him here.
Q. Are you acquainted with Colonel Bentley?
A. I have met the Colonel.
Q. Are you acquainted with Mr. De Sollar?
A. Yes, sir.
Q. Did you go with Prof. De Sollar to Bentley's office on any occasion?
A. I did.
Q. About when was it?
A. Well, it was about the 23rd or the 24th of March last, between about four and six in the afternoon.
Q. What transpired there?
A. After we went in first Mr. De Sollar introduced me to Mr. Bentley, and Mr. De Sollar told Mr. Bentley that he had been trying to settle up that matter with Mr. Hanscome, and he had referred him to him, and he said that he was — Mr. De Sollar's receipt; he was ready to comply with his part of the agreement and he wanted a deed. Mr. Bentley smiled rather sarcastically and said he had no deed for him. Mr. De Sollar repeated two or three times. Finally he says, "I can't make you any deed;" something like that. That was about all that was said.
61 Q. If there was anything else said state it fully.
A. There was not anything said except just in that line; Mr. De Sollar *had* it over two or three times.
Q. Did you go with Mr. De Sollar to any point after that?
A. We went and took a drink after that.
Q. Nothing else?
A. No, sir; I left.

Cross-examined by Mr. BENTLEY:

Q. Didn't Mr. De Sollar tell me on that occasion that he was going to record those papers?
A. I am not positive whether he did or not; my impression is that he did not.
Q. Wasn't there something said about recording of those papers at that time?
A. I don't think there was.
Q. Didn't I tell him on that occasion that if he went and recorded those papers he would be sued for damage?
A. I don't think those papers were brought——
Q. Answer my question, please. Didn't I tell him on that occasion if he went and recorded those papers he would be sued for damage?
A. I don't think you did, sir.

F. D. MORSE.

Subscribed and sworn to before me this 4th day of December, A. D. 1889.

JOHN W. WEBSTER, *Examiner.*

Thereupon the plaintiff produces William H. Melone as a witness in his behalf—

It being now understood that each and every question
62 propounded to the witness shall be considered as being objected to as being irrelevant, immaterial, and incompetent, this being done to avoid the necessity of objecting severally to each question.

WILLIAM H. MELONE sworn.

Direct examination by Mr. PHELPS:

Q. Are you acquainted with Prof. De Sollar, plaintiff here?
A. I am.
Q. Did you ever have occasion to examine some abstracts to property in block 36, Park Avenue addition to Denver, for him?
A. I did.
Q. Do you recognize these as the abstracts? (Handed papers.)
A. Yes, sir; I have seen those before.
Q. Did you examine by the records—that is, did you compare the entries with the——
A. I did.
Q. Do you remember how long it was after you received the abstracts from Mr. De Sollar until you reported to him upon them?
A. I don't remember that, Mr. Phelps.
Q. State whether or not you reported the same day you received them.
A. I think I reported very shortly afterwards; I am very sure of it.
Q. You can't fix the date on which you received them and the date on which you made the report?
A. I cannot now.
Q. Do you remember whether or not you examined them early in the day or in the afternoon?
A. I examined them in the morning.
Q. How early in the morning?
63 A. I usually go to the recorder's office very early in the morning; sometimes before the main door is open.
Q. These were left with you in the evening?
A. They were left with me in the evening.
Q. And you examined them the next morning?
A. Yes, sir.
Q. Did you subsequently have a conversation with Mr. Hanscome in regard to what you found upon the abstract?
A. I did.
Q. What was that conversation?
A. Mr. Hanscome with Mr. De Sollar came to my office. I stated

I found upon the examination of the title a receipt filed there by some person claiming to have sold the property. I had so stated to Mr. De Sollar that that was upon the records, and I suggested to Mr. Hanscome that it was his duty to have that removed in some way.

Q. Do you remember what Mr. Hanscome said in regard to it?

A. Well, Mr. Hanscome stated that the person who made that receipt had no authority. I said that that was question of fact that would have to be decided in some proper way, and he declined to have it removed; said that Mr. De Sollar would have to remove it if he wanted it removed.

Q. Do you remember anything else?

A. I don't remember very many facts except his manner at the time; that he was very indignant; he spoke of it as a blackmail; he was indignant at the fact it should be a person should put it there had no authority or right. That receipt purported to be signed by a man by the name of Chittenden in favor of the man——

Q. Signed by Dubbs in favor of Chittenden, perhaps?

A. Yes, sir. They were connected, I know, in the abstract, in that way.

Q. Was there any further conversation?

A. Not that I remember at all.

Q. Did the parties go off together?

64 A. They started out and I called Mr. De Sollar back.

Q. Do you know where this property is situated?

A. No, sir; I can't tell you by the street.

Q. Can't you tell by its proximity to the cable road or anything of that sort?

A. I don't remember now, Mr. Phelps; my best recollection of it is between 16th and 15th, Colfax avenue.

Q. Colfax and 16th, on Clarkson?

A. I am not positive about the cross-street there.

Q. That is, as to the name of it?

A. Yes, sir.

Q. Are you acquainted with the value of property in that locality?

A. Yes, sir; I think I am.

Q. Is property more or less valuable there at the present time than it was in March, 1888?

Objected to.

A. O, it is worth more money.

Q. Worth more at the present time?

A. Yes, sir.

Q. About what per cent. more?

A. I think it is worth double.

Q. What would you say these lots were worth at the present time or in December last—both ways, please? *A.* What they are worth now and what worth in the early part of last December and what now?

A. Well, I should say they were worth now eighty-five hundred dollars.

Q. And how much the first of last December?

A. Oh, they would not vary very much from that.

Q. About the same?

—. ——.

WILLIAM H. MALONE.

Subscribed and sworn to before me this 4th day of December, A. D. 1889.

JOHN W. WEBSTER, *Examiner.*

65 By the consent of the counsel the further taking of testimony in this case is continued until Wednesday, the fourth day of December, A. D. 1889, at the hour of 7.30 p. m.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this Wednesday, the 4th of December, A. D. 1889, at the hour of seven and one-half o'clock p. m., counsel being present, the following proceedings were had:

Complainant's counsel presents a stipulation with certain exhibits thereunto attached, the said exhibits being lettered from A to G, inclusive, said Exhibit G embracing transcript of testimony of witnesses taken in the case of Hanscome *versus* De Sollar, 2367, on the law docket of the circuit court, as follows: First, testimony of William B. Hanscome; second, the testimony of Herbert S. De Sollar; third, the testimony of Frederick W. Herbert; fourth, the testimony of Montie Kilbourn; fifth, the testimony of William H. Malone; sixth, testimony of F. D. Morse; seventh, the testimony of Judson Eldridge.

Defendant's counsel objects to the introduction of this evidence; to Exhibit A, the compl*ia*nt in the case on the law docket 2367; to Exhibit B, the answer of the defendant in said cause; to Exhibit C, the reply of the plaintiff in said cause; Exhibit D, the verdict of the jury in said cause; Exhibit E, the judgment in said cause, for the reason that the same are each irrelevant and incompetent; and objects to Exhibit F because the same is immaterial and

66 irrelevant and incompetent, and Exhibit G because the same is immaterial, irrelevant, and incompetent.

The said stipulation and the various exhibits thereunto attached, so offered in evidence, are hereto attached in this case and marked Exhibit I, J. W. Webster, examiner.

The complainant further offered in evidence the deposition of the witness Henry Goldbeck, taken in the cause known as 2367, on the law docket of said court, referred to in the said stipulation, it being understood that the original deposition itself shall be transferred from the said law case and be put in this cause the same as if it were a deposition taken before the examiner in this cause, the said deposition being offered first in accordance with the first portion of the stipulation, already herein referred to, as a part of the testimony to sustain the complainant's case on the bill of complaint herein;

and, second, for the purpose of showing in part what the evidence was in the trial of the issue in the said law case before the jury in connection with the testimony of the witnesses mentioned in said Exhibit G. Defendant's counsel objects to it as being considered under the second offer for the same reasons that have already been made to the different portions of Exhibit G, and thereupon the complainant rested.

Defendant's counsel here moved the court to dismiss the complainant's bill upon the ground that the testimony is insufficient to entitle him to the relief demanded.

Defendant's Testimony.

Thereupon defendant produced William B. Hanscome, the defendant, a witness of lawful age, who, being by me (the examiner) duly sworn that he shall testify to the truth, the whole truth, and nothing but the truth, testified as follows:

67 WILLIAM B. HANSCOME, being duly sworn, testified.

By Mr. BENTLEY:

Question. Are you the defendant in this cause?

Answer. Yes, sir; I am.

Q. Do you know the complainant, Herbert S. De Sollar?

A. I do.

Q. Where did you first become acquainted with him?

A. In Denver.

Q. When?

A. On the 12th day of March, 1888, at his office-room door in the Tabor Opera House block.

Q. Did you have any conversation with him at that time?

A. I did.

Q. State what that was.

A. What I said and what he answered?

Q. Yes.

A. I called there and inquired for Mr. De Sollar. He came out and I introduced myself as Mr. Hanscome, from Wichita, Kansas, who owned those lots on Clarkson street with whom he had been negotiating or talking about them with Judge Henry. I told him I had just come from Judge Henry's office, where he showed me an agreement that he and Henry had in relation to those lots. I called to tell him that Henry had not carried out my instructions, and that I should not sanction the trade; that according to the agreement there he was to sell those lots, deed him those lots, and let him pay a part of the cash on the 24th day of March; the agreement dated the 3rd day of March. I told him that was not half cash, as I had authorized Judge Henry to offer the property for sale; that as he had only paid me $50 that I should not sanction or ratify that agreement, for that was not half cash. Well, I told him also that the property was worth more than Henry had sold it for or had agreed to sell it for, and I should not stand to the agreement. I

repudiated it. He asked if I hadn't received some money. He said you had some money, or something to that effect. I told
68 him Henry had sent me a draft of $50, which I was willing to refund him. That is about the purport of what was said. He stuck to it that that agreement was binding, and I also said that I thought that he and Henry was in a great hurry, in great haste, to consummate a trade after I had written him the last of February or first of March that I would be in Denver about the tenth of March, and if there was a chance of making a trade, then I could deed the property after that; that both he and Henry were in great haste, and I asked him this question: I asked Mr. De Sollar that if he thought this agreement made the 3rd day of March and some cash was paid, or a part of the cash was paid, if it would be good business to consider that a valid agreement when the cash was not paid until the 24th of March. I also told him then and there that the lots were worth $6,000 cash, and that I had been offered that since I came to Denver, and that they would give me $6,000 cash; and he said, I will sell them to you for that, and I told him I didn't propose to buy my own property. I told him before I left I would take the matter under consideration; that I would not ratify, but that I would hold it open for a day or so provided the rest of the $2,500 would be cash. He said he didn't know as he could get the money then, but said he would see what he could do. I said I would not agree to hold the property open longer than a day or two, but that I would hold it open for a day or so, or something to that effect. He was to look around and see if he could raise the money, and I was to call the next day. Before he said that he asked in relation to the $50 received, and wanted to know if that was all I had received. I said that was all I had received, and he said he had paid Henry $200. I told him Henry had no authority to receive money or to receipt money for me. That was about the substance of what was said at that interview.

69 Q. When did you next see him?

A. I saw him on the next day, the 13th of March.

Q. Where?

A. At the same place—in the hall of his room, of the Commercial college, in his school-room.

Q. What transpired then? Go on and tell what was said.

A. I told him I called to see what his prospects was of getting the money, for the reason that I had a trade in view wherein I would need that much more money than I had for a cash payment, and if he was likely to get that money I was likely to carry out this trade.

Q. Do I understand you to say that you told De Sollar about that trade then?

A. Yes; I did. I told him I had the trade in view and that was one reason that I was anxious to get the money. I told him that I would deed him the property, for I could make it up on this trade, although his would be less money.

Q. Go on and tell the whole conversation that happened there then.

A. He said he hadn't the money yet, and didn't know as he could get it—that was the second day—but he would see. In the meantime, he said, I haven't seen the abstract. I told him just as soon as he paid the rest of the money, if he wanted to carry out his trade, he could have the abstract, for it was all made out; that there were no transfers of the property since I had it carried down, and it would take no time to bring it down; that I had the abstract over at my room with my papers; it would be a short job to have it brought down, and I would do so. That is about all that was said that day about this trade.

Q. Is that all the conversation?

A. Perhaps something more was said.

Q. Tell all the conversation.

70 A. Well, I told him that I would like to have the money; that that was the only reason, because of this trade, and that I would deed the property to him. He said he didn't know; he wasn't sure that he could raise the money right away; that he had arranged to have it by the 24th. It was also said at that meeting—I also told him he could not hold me to that agreement and that I didn't propose to stand to it at all; that it was arranged with Judge Henry, and I would not sanction or ratify it, as I said before; and at this time we discussed that he thought that that agreement was good and it would hold, and all that. I told him that an agreement made the 3rd day of March for half cash 21 days later could not be called spot cash. He said that 30 days ought to hold, or something to that effect.

Q. Well?

A. I think that was all or about all. I told him then I would bring him the abstract if he thought there was a prospect of his getting the money.

Q. What did he say when you told him you thought you would bring him the abstract—anything further?

A. No; not that I remember.

Q. When did you next see him?

A. On the 15th.

Q. Where?

A. At his office—the same place.

Q. State what occurred then.

A. I think I took the abstract to him; I think I carried the abstract and handed it to him and there wasn't much said. We went over talking similar to that before about his getting the money. He didn't know if he could get the money. I also intimated that I couldn't hold it open more than two or three days, as I was in a hurry to get back to Wichita.

Q. Well?

71 A. This trade that I had on hand I told him they wouldn't hold it for me. He said he wanted to show the abstract to his attorney.

Q. You left the abstract with him; is that so?

A. I think so.

Q. When did you next see him and where?

A. That same day.

Q. Well, where?

A. At Henry's office, about 12 o'clock, I think.

Q. What took place then?

A. He showed me the abstract. He said his attorney—that Judge Malone said there was a cloud on the abstract. He said the abstract was all right except a certain receipt given by Dubbs to Chittenden for $25, which was a cloud on the title.

Q. Go ahead and tell all the conversation that happened there.

A. Then I told him, I explained to him, to Mr. De Sollar, how that receipt came on there.

Q. Tell the conversation and how you explained it.

A. I told him that Mr. Chittenden put Dubbs' receipt on there. I told him that Dubbs had no authority to act as agent for me at all, to sell those lots for one-third of their value, and that it was a piece of blackmailing scheme to extort money out of me or something to that effect. He said he thought that I ought to have the cloud removed—taken off. I told him I should not; I never should ask them to take it off or pay them a dollar for doing so; that my attorney told me the title was perfect; that it didn't amount to anything and to treat it with perfect indifference; that if it became necessary to have it removed at any time he could have it done himself, or something to that effect, at little expense; that is about the sum and substance of it at that time. He proposed we
72 go up and see his attorney, to Mr. Malone's office, which we did. Mr. Malone was not in at the time. Some one else was there; I don't know who. After Judge Malone came in I explained in substance the same to them, to Judge Malone and this man—the substance that I had over in Judge Henry's office. I also told them then and there that I should not have that removed or make any effort to do so; that I was perfectly responsible, would give him a warranty deed; that I would do it after I got ready. I think Judge Malone came in just before we left; that is my impression.

Q. What then?

A. I think we left, and that I went into Mr. De Sollar's schoolroom.

Q. With Mr. De Sollar?

A. Yes, sir.

Q. Who else was there?

A. Mr. De Sollar and I alone.

Q. Go on and tell what transpired then.

A. We talked this matter over. He said he didn't want to take that property without that cloud removed. I told him I should not do it; that I didn't care anything about making the trade, anyhow, and we had some more talk about it again, and I suggested the idea of his going up to see my attorney about the matter, Mr. Bentley; then I went to Mr. Bentley's office with him and I introduced him to Mr. Bentley.

Q. Well, state what transpired at Mr. Bentley's office.

A. I told him, Mr. Bentley, to explain about that Dubbs receipt to him; that he could do it better than I could, perhaps, and also

tell him that I would give him a warranty deed and if he would take it how he would stand.

Q. Well, state what transpired when you got to my office between you and Mr. De Sollar and myself.

A. I told him, Mr. Bentley, to explain this matter to him; which he did. That is about all.

73 Q. State what Mr. Bentley said.

A. He advised me not to have anything to do with it—the removing of the receipt.

Q. I wish you would state what conversation took place, no matter if you repeat it a dozen times.

A. Well, I said then it was a blackmailing scheme to extort money from me to have the receipt removed.

Q. Who said that?

A. It was myself, and Mr. Bentley told him it, the abstract, was all right, and said he had known me a long time and that it was all right and that I had consulted him when he had it put on; and — have the matter amicably settled he (Mr. Bentley) advised me to give him a warranty deed. I let Mr. Bentley do the talking. He did most of the talking then.

Q. What did Mr. De Sollar say? I want both sides.

A. Mr. De Sollar refused to take my deed unless that receipt was removed. His attorneys advised him. He said something of that kind.

Q. Well, what further? State all of that conversation if anything further was said.

A. He declined to do so, and then I said there was no use to spend any more time about this matter; we would drop it. He said he should not drop it; he should file that agreement and those letters on the record, and Mr. Bentley told him if he did he would be liable; that I could make him pay whatever damages there were, and advised him not to do it.

Q. Well?

A. That is about all there was; as I said, Mr. De Sollar did most of the talking at that time and Mr. Bentley.

Q. When did you see Mr. De Sollar again and where?

A. Well, it was—my attention was called to it—he came running along on the street, between 17th and Curtis, hollowing to me, Hanscome, Hanscome, and I made a little halt, and he came

74 up in great haste. I told him if he had business with me he could go to the St. James hotel; that he had to go and see my attorney; that the street was no place to talk; that the public highway was no place for business. I didn't know but it was a policeman that was after me, hollowing that way. In the first place, I didn't pay much attention, but when I heard my name, then I halted.

Q. Do you know what he spoke about?

A. He wanted to fix that matter up or something like that. I told him I had nothing to fix up; that he could see my attorney; that any trade was off. I paid little attention. It wasn't more than a minute or so. He didn't go to the hotel to see me.

Q. When and where next did you see him?
A. On the 20th of March.
Q. Where?
A. At his room between four and five o'clock in the afternoon, I think.
Q. How did you come to go there at that time?
A. Judge Henry told me——

Complainant's counsel objects as being immaterial, irrelevant, and incompetent.

A. Judge Henry told me. I received a note at the hotel from Mr. De Sollar. He told me in the note——

Complainant's counsel objects to what Mr. De Sollar said being stated.

A. He said he wanted to see me that afternoon. I went, and he gave me a paper.
Q. Have you got that paper?
A. I have not. It was torn up.
Q. Go on now and state what occurred at Mr. De Sollar's office.
A. I said I should not have that removed.
Q. State what was said when you were there that afternoon.
A. I went there according to request of Mr. De Sollar, and
75 he seemed pleased to see me, and he said he thought we could fix this matter up amicably without having any trouble about it; that he thought the property was worth more than he was to pay for it; get it from Judge Henry and he would have made a good trade by getting it, and I would have lost some money by carrying out the trade. He thought we could compromise matters so that we both could make something out of it. He said that I could hold the property. He would try and sell it; that he would not sell it for less than $6,000, and all he could get for it over $5,000 that he would divide between us, but in no case that he should sell for less than $6,000, and the sale should be made within 90 days. About that time he made the remark that he thought of going into the real-estate business, and he thought he could sell it better or as well as anybody else, and in that case there would be no commission, but if other agents sold it the commission would be $150, and the commission could be divided between us that we would have to pay any one else; something to that effect. That was about the sum and substance of it. And he proposed that we put it in writing, and I told him he could draw up an agreement as we had talked; that we had a fair understanding then; and he sat down and wrote on a letter sheet a page or so, and I think we both signed that agreement. I told him I would like to take the agreement with me home that night, and he objected and said he wanted to show it to his attorney. It struck me a little strange that—when if we were arranging this thing, this matter—he wanted to show it to his attorney, and I told him so.
Q. No matter about the impression; what was done?
A. Well, I left the agreement with him.

Q. When did you see him next?

A. The next morning, the 21st.

76 Q. Where?

A. At his room, his school-room.

Q. State what transpired then.

A. I called in—told him I wanted to see that agreement that we both had signed the night before; that I had been thinking of it through the night. I wanted to see it.

Q. State what the conversation was.

A. I wanted to see it—asked him for it. He objected to letting me have it; he said he would keep it. I told him I wanted it then. He said he would copy it. I said that if he would copy it I would wait for it. I did wait for it; he sat down to the desk and copied it and handed it to me. I told him I wanted the original; he could keep the copy. He rather objected to letting me have the original; he finally did. He erased his name from the bottom of the paper and handed me the original. I told him I wanted the original to show my attorney, Mr. Bentley.

Q. Is that the paper (showing witness the paper)?

A. Yes, sir; I should say it is, although I have not seen it for a long time.

Q. Examine it at the bottom and see if you see the names are erased.

A. Yes, sir; that is the identical paper.

Paper marked Exhibit 2 for identification.

Q. I notice that your name is also erased; when was that done?

A. I believe I did that afterwards.

Q. After he gave it to you?

A. Yes, sir; I think so.

Q. When did you next see De Sollar?

A. I next saw him the same day.

Q. Where?

A. At his office, his school-room.

Q. What transpired then?

77 A. I called there with a paper—with a sketch that Mr. Bentley drew up for me in response to suggestions that I made about the conversation and agreement that Mr. De Sollar and I had entered into the night before. I told Mr. Bentley about what transpired the night before.

Q. What was the conversation at De Sollar's office?

A. I called his attention to this paper; that we could both sign that; that it was a fair exposition of the matter as I told it to Mr. Bentley. Mr. De Sollar tore up the original and also the copy, the copy of the original.

Q. Are you quite sure that Mr. De Sollar tore up my memorandum?

Q. Yes, sir; I am pretty positive about that.

Q. I can show you the memorandum that you brought immediately back to me.

A. All right.

Q. I don't propose doing anything without a proper understanding of matters. That is not my way of doing business. Look at that paper. See whether that is the same paper that you carried to Mr. De Sollar (showing witness the paper).

A. I should say it is——

Complainant's counsel objects to the answer as immaterial, irrelevant, and incompetent; that it's not competent for plaintiff to contradict himself by his own testimony.

A. I think it is, for the reason——

Q. You need not state any reasons. State, now, after examining this paper, what your recollection is about Mr. De Sollar destroying the paper you carried to him.

Complainant's counsel objects as irrelevant, immaterial, and incompetent to contradict himself after giving reasons for Mr. De Sollar tearing up the paper.

78 Q. Answer the last question.

A. Well, I said that he tore up the paper, but in thinking of it it was a copy of the paper that he tore up—his own handwriting.

Complainant's counsel objects as being incompetent and immaterial, and asks that the answer be stricken out.

Defendant's counsel also wishes the answer stricken out.

A. Well, I think he didn't destroy the paper that Mr. Bentley wrote.

Q. That is not the answer.

A. I don't understand.

Q. My question is, what is now your recollection about Mr. De Sollar destroying the paper that you carried to him?

A. From you?

Q. That is what we are talking about.

A. That he didn't do it, now that I think of it.

Complainant's counsel objects to the answer as being irresponsive to the question; that it is immaterial, irrelevant, and incompetent.

Paper marked Exhibit 3 for identification.

Q. Now go on and state fully what transpired between you and Mr. De Sollar when you took the paper there which you say I wrote.

Complainant's counsel objects, as the witness *having* been fully interrogated about that.

A. Shall I repeat?

Q. Yes; commence at the beginning and tell the whole story.

A. He read over the paper that I took there—the synopsis that Mr. Bentley drew up—and said that he would have nothing to do with it, and tore up the copy of the agreement that we entered into—the paper that he had.

Q. The paper that was written the day before?

A. Yes, sir; the day before. He said he would have nothing

more to do with it; if that was the way I was going to bam-
79 boozle him he would have nothing more to do with it, or something of that kind. Then I made the remark that I didn't propose to waste any more time if that was the way he was going to fool with me; that I didn't propose to waste any more time.

Q. Is that all?

A. Yes, sir; about all.

Q. When and where did you see him next?

A. The next was on the 23rd—the 21st. I may have the dates mixed a little. This was on the 20th, I think. Shall I refer back use throughout the United States and Territories thereof the said to my papers?

Q. It is not necessary.

A. It was on the 21st of March.

Q. *Q.* Where was that? That was the next time you saw him?

A. Yes; it was on the 21st, in the hallway, out of his office.

Q. What occurred then?

A. I called for Mr. De Sollar. He came out. Mr. Fred. W. Herbert was with me, and I introduced him to Mr. De Sollar—*he* Herbert—and told Mr. De Sollar I was willing to give him my warranty deed of that property if he would accept it—half cash and the other the way we had talked. He said he wouldn't take it unless I removed the Dubbs receipt. I told him there had been enough said about that; that I should not—that if he wanted my deed, then all right. He refused to take it unless that receipt was removed. I then took $50 out of my vest pocket that I had received from Judge Henry that I presumed he had paid to him. He refused to accept it, and wanted to know what kind of a man I took him for, and also asked if that was the way we did things in Wichita. I told him that was the way we did things in Denver; and I again asked him if he refused to take my deed, and he said he did. I said, This is the last time I shall offer this; now do you refuse to accept the money? And you cannot have that property now; and he said that if I didn't remove the Dubbs receipt that he would place the agreement and papers that he had on record and would fix it so that I and my
80 heirs could not get it off; something to that effect. I made the remark that I presumed he was responsible, and, if so, I would make him suffer the consequences, and I told him that it was the last time I should see him in relation to that matter.

Q. Is that all?

A. The sum and substance; it may not be exactly word for word.

Q. When and where did you see him again?

A. The 23rd day of March, at my room in the St. James hotel, about half past five in the afternoon, I think. I was in my room when some one came into the room without announcing himself by sending a waiter boy or any card; came in unannounced. I was making my toilet, as I was going out that evening. It was about half past five, and I didn't know who it could be who would come

in without sending any one up to tell me, because I didn't think that was the way a gentleman ought to do, and it was not, I thought, showing me the right respect.

Q. State what happened.

A. Mr. De Sollar came in and said he would take that deed—no, said he wanted the abstract. I had made the remark before that that if he wanted to see me he ought to have announced himself from the parlor. I thought that that was not treating me——

Q. Well, go on and tell the conversation.

A. He said he wanted the abstract. I told him he would have to go to Mr. Bentley for the abstract; he had it. He said, I have concluded I will take that deed. I told him I would not give it to him; he would have to go and see my attorney; I had left all my papers with Mr. Bentley now. He said something about a lawsuit and the gentleman that was with him.

Q. State what was said about that.

A. I told him I didn't want it—the lawsuit—but if it was
81 necessary I would get out of it the best way I could. I told the gentleman that was with him that I didn't want to waste so much time; that I had a good deal of time that I wanted for other purposes, and we had some talk in that way. I don't remember every word that was said, but that was about all.

Q. Did he go away then?

A. He did.

Q. Were you in Denver the following summer?

A. Yes, sir; I was.

Q. When did you come here and how long did you remain?

A. About the middle of July. I remained here, perhaps, a month—perhaps a little more, perhaps a little less—about a month—to the middle of August.

Q. Did you see De Sollar while you were here?

A. I did.

Q. Frequently?

A. I saw him several times; met him on the street.

Q. Have any conversation with him?

A. I did not.

Q. When next were you here?

A. Somewhere in the neighborhood of the 10th of November, I guess.

Q. How long did you remain then?

A. I remained till after the middle of December—about the 20th, I think.

Q. Did you see De Sollar then?

A. I did. I met him.

Q. On the street?

A. Yes, sir.

Q. Have any conversation with him?

A. No, sir; none at all.

Q. Did you hear Mr. De Sollar give his testimony before Examiner Webster in this matter?

A. I did.

Q. Did you hear him testify that the first time he saw you was on the 13th of March?

A. I did.

Q. 1888?

A. I did.

Q. Now, state how it is that you are able to locate with certainty the time as on the 12th when you first saw him and had con-

82 versation about this matter.

A. Because I arrived in Denver on the 11th.

Q. Can you tell the day of the week?

A. Yes, sir; because I arrived here on the 11th and it was on Sunday. On the next day, early in the forenoon, in the morning, I called at Judge Henry's office, and I went directly from there to De Sollar's office. As soon as I got there I read the agreement that Judge Henry had. He and De Sollar had entered into it. It was the first week day after my arrival.

Q. Did you hear De Sollar's statement that at your first interview with him that he asked you for the abstract of this property?

A. I did.

Q. State whether or not you did have the abstract at that time.

A. I did not.

Q. Where was the abstract and papers?

A. They were in my valise with other Denver papers at the St. James hotel.

Q. State whether or not the abstract was spoken of at that interview at all.

A. No, sir; not at all; not at that time.

Q. Did you hear Mr. De Sollar's statement of the first conversation, as related by him, to the effect that you told him that Henry had told you that he, Henry, had had a great deal of trouble in making the sale?

A. Yes, sir; I heard that.

Q. State whether or not such conversation took place between you and Mr. De Sollar.

A. No, sir; nothing of that kind was mentioned, not once.

Q. Did you hear his testimony in relation to that conversation, to the effect that you told him, De Sollar, that Henry had told you that he, De Sollar, had only paid $150?

A. I did not say that. Mr. De Sollar told me that he paid Henry $200.

83 Q. Did he make that statement to you in the first conversation that you had with him?

A. Yes, sir; the first.

Q. The one that you say took place on the 12th?

A. Yes, sir; on the 12th.

Complainant's counsel objects as immaterial, irrelevant, and incompetent; that counsel is questioning witness in relation to what he has already stated in full.

Q. Who was present at the conversation—at the time of the con-

versation which you have testified to having with De Sollar in Judge Henry's office on the 15th?

A. No one that I know. They might have been in and out, but no one that I know.

Q. At Judge Henry's office, who was there?

A. Judge Henry himself was present.

Q. That is all that you know?

A. That is all that I know. Other gentlemen had desks there that I didn't know.

Q. This conversation took place in the presence of Judge Henry?

A. Yes, sir; I can tell what Henry said at that time if that goes in.

Q. You may state what Mr. Henry said at that time—when he and Mr. De Sollar were present.

A. Mr. Henry told him that he had better take the deed; that I was perfectly good; that I was responsible. He said I owned quite a large amount of property in Denver and in other places, and told him he had better take the deed.

84 Cross-examination by counsel for complainant.

By Mr. PHELPS:

Question. How soon after March 23rd did you leave Denver?

A. I left the next day, the 24th.

Q. Where did you go?

A. I went to Wichita, Kansas, to my home, where I live.

Q. Where did you live at that time?

A. Wichita, Kansas.

Q. When you came here in November how long was that before you instituted the suit against De Sollar, known on the law docket as 2367, in the circuit court?

A. It was some weeks; I don't know how long exactly; it was in December.

Q. Was not that suit begun the first week in December?

A. I don't remember, but I think not.

Q. You stated in your testimony here that you first saw De Sollar on the 12th of March and the next time on the 13th?

A. Yes, sir.

Q. How does it happen that on the trial in the other case, 2367 on the law docket, that you testified that you first saw him on the 13th and the next time on the 15th?

A. I don't think I did testify that, sir.

Q. When do you say now was the first time that the subject of the abstract to the property was first mentioned between you and De Sollar?

A. On the 13th, on the second time that I called there. It was not mentioned the first time at all.

Q. After you first arrived in Denver did you have those abstracts certified to and brought down?

A. I did.

Q. When did you have that done?

A. On the morning of the 15th.

Q. What did you do with them after that?

85 A. I think I took them up to Mr. De Sollar.

Q. Where did you receive them?

A. In Mr. McCollough's abstract office.

Q. After you received them then didn't you deliver them to Mr. Henry and tell him to take them to Mr. De Sollar?

A. I did not.

Q. I think you said a moment ago that you did not, and now you say you don't think you did.

A. I don't think I did.

Q. Which way do you want to be understood now—that you think you did or that you don't think you did?

A. I think I did not.

Q. Do you mean to say that you didn't take them or that you think you didn't?

A. I am not sure; I am not sure of anything but death and taxes.

Q. Didn't you take them there to Judge Henry?

A. I think I took them to Mr. De Sollar myself.

Q. Of that you are now sure?

A. Pretty sure. I think I did.

Q. Prior to coming to Denver did you receive a letter from Mr. Henry in regard to this sale?

A. Yes, sir; in relation to those lots; a letter in relation to a contemplated sale he had.

Q. Do you remember when you received that letter?

A. The 22nd day of February.

Q. That letter was dated the 22nd day of February?

A. Yes, sir; I believe so.

Q. Before leaving Wichita did you receive a letter from Mr. Henry enclosing $50, and stating that he was to keep a part for his commission?

A. No, sir.

Q. Did you receive such a letter?

A. Yes, sir; or something of that kind—stating something of that kind.

86 Q. Have you got such a letter?

A. I did. I received it, but I think I have not got it.

Q. Where is the letter?

A. I think Mr. Bentley has it. I have not seen it for some time and I don't remember much about it.

By Mr. PHELPS: I would like to have Mr. Bentley produce that letter.

By Mr. BENTLEY: I think I have that letter among my papers and I will try to find it and produce it for you.

Q. In the usual course of the mail how long did it take a letter to go from Denver to Wichita at that time?

A. At that time I don't know how long, for the mails were very irregular; sometimes the trains were late.

Q. From Wichita to Denver, how long was it; in the usual course of events?

A. I don't know; sometimes the train would be an hour or two late and the letters would be delayed. The mail was very irregular and I have received letters in five or six days. I have received letters in two days each way, but the mail was irregular at that time. There is more regularity now.

Q. Have you the envelope in which that letter was mailed?

A. I don't know; I don't think I have.

Q. Where is it?

A. I don't know where it is.

Q. Was not that letter dated the 6th of March?

A. I don't know; it is so long ago.

Q. Where did you receive that letter?

A. I received it in Denver.

Q. When?

A. On the morning of the 12th of March.

Q. Where?

A. At the St. James hotel.

87 Q. Didn't you tell Mr. Henry, on the morning of the 12th of March, that you received that letter on the 10th of March; that you received that letter just before leaving Wichita, after you had gone to the train?

A. No, sir. You want to know what I did tell him?

Q. Never mind; I'll ask you what I want you to tell. Was that letter introduced in evidence at the trial of the other cause, 2367 on the law docket?

A. I don't know.

Q. Was it produced on the trial of that cause?

A. I don't know, sir.

Q. Was not that letter produced on the trial of that cause?

A. I could not tell you.

Q. Was it not read to the jury on that trial?

A. I don't know; I don't remember.

Q. Is this a correct transcript of that letter?

DENVER, COLORADO, *March 6th.*

Mr. William B. Hanscome, Wichita, Kansas.

DEAR SIR: I have at last sold your three lots on Clarkson street, this city, to H. S. De Sollar for $5,000, but to do it had to sacrifice a part of my commission. I have made this sale in exact accordance with your advices, namely, $2,500, to be paid on or before 24 March, '88, and $1,250 to be paid on or before 24 March, '89, and $1,250 to be paid on or before March, 1890, with eight per cent. per annum interest, notes for deferred payments to be secured, of course, by deed of trust on the property sold. The buyer, De Sollar, is quite a large property-holder here and is altogether responsible.

88 I think, and so do other real-estate men here, that this is the best sale made this winter. I enclose herein a draft for fifty dollars from the Colorado National bank payable to your order on Kountze Brothers, New York. This is for earnest money. Please

acknowledge receipt of same. You wrote me you expected to be in Denver about the 10th of the present month. Can you not postpone your visit till about the 20th or 24th, so that this matter may be closed while you are here? In the meantime you might send your abstract to me to some friend in order that no time may be lost in having it brought down.

Most respectfully, JOHN J. HENRY,
Post-office Box 1886.

A. What is the question?

Q. Is that a correct transcript of the letter you received?

A. I should say it was.

Q. Did you produce this letter at the trial of the other cause and was it not then and there read to the jury by your attorney or by you?

A. I don't remember about that, whether it was or was not.

Q. You say you don't remember?

A. No, sir; I do not. It is a long time ago.

Q. Did you receive and read that letter before you went to Judge Henry's office?

A. I did.

Q. You stated here tonight that you stated to Mr. De Sollar that Mr. Henry had no authority to receive money for you on the sale of this property. Did you make any such statement as that in your testimony before the jury in your other cause?

A. I don't know whether I did or not. I don't know what I testified to then. I presume I did.

89 Q. You mean to say, then, that your best recollection is that you made that statement on that trial, 2367?

A. I think I did. I never have read my testimony since then and I don't remember what I testified to then.

Q. You stated on the examination here tonight that you told Mr. De Sollar in one of those first conversations that you thought they, De Sollar and Henry, were in great haste in view of the fact that you were to be here soon.

A. Yes, sir. I told him I thought they were in a great hurry.

Q. Did you make any such statement as that on the other trial before the jury?

A. I don't remember whether I did or not. I presume I did. I should have done so, anyhow.

Q. You stated in this examination tonight that you told Mr. De Sollar that no one would claim that an agreement made on the 3rd day of March for cash would be considered spot cash when the money was not paid until the 24th of March. Did you make that statement or in substance before the jury on the other trial?

A. I don't know. I presume I did. I don't know what I stated before, as it was six months ago.

Q. On the trial of the other cause before the jury did you state this, that you would lose $1,000 by letting the property go to De Sollar for the price named, but that you would waive that, as you thought he and Judge Henry acted in good faith and you wanted to protect Judge Henry in the matter; that you thought it was all

square and right on his part; that you could make as much out of this purchase you were to make if you could get the $2,500 so as to go on with the trade?

A. I think I did. Whether I did or not it is true that we had such conversation. I don't know whether I stated it then,
90 but I state it now, for if I didn't say so then I would like to make such a statement now.

Q. Never mind about that. You testified on the trial of the other cause and testify here again tonight that Mr. De Sollar on some occasion tore up a copy of the paper which he wrote and which you and he signed. Do you not know that at the trial of the other cause that copy was produced—shown—and did you not know as a matter of fact that it was not torn up?

A. I don't know whether it was produced then or not.

Q. Was it not produced and shown at the other trial before the jury?

A. Not that I know of; I think not.

Q. Were you present when Mr. De Sollar gave his evidence before that jury?

A. I was.

Q. All of it?

A. I think so.

Q. Did he not produce the copy there and then while he was upon the witness stand?

A. I don't remember about that.

Q. When do you say the conversation between you and Mr. De Sollar took place, as to the conversation you had with Mr. Bentley at Mr. Bentley's office when Mr. De Sollar was there?

A. I think it was on the 15th of March.

Q. And Mr. Bentley explained to Mr. De Sollar——

A. Yes, sir.

Q. As you had explained, that the Dubbs receipt was of no legal force when you said that it was a blackmailing scheme to extort money from you, and Mr. Bentley said that you were wholly responsible and that your warranty deed was all that he needed; is that about correct?

A. I think so. There was more talk about the Dubbs receipt when Mr. Bentley said that I was good and told him of my
91 ability to make matters all right.

Q. What time of the day did you leave Wichita in coming to Denver, in March, 1888, I believe?

A. I don't remember; the train may have been a little late; I think about 4 o'clock in the afternoon.

Q. How long were you in coming?

A. Something less than 24 hours. I don't remember whether the train was behind time or not. It was about two hours late generally.

Q. What time of day did you say you left?

A. I think about four o'clock in the afternoon. Trains have changed time since then.

Q. When did you get here?

A. Early in the afternoon on Sunday.

acknowledge receipt of same. You wrote me you expected to be in Denver about the 10th of the present month. Can you not postpone your visit till about the 20th or 24th, so that this matter may be closed while you are here? In the meantime you might send your abstract to me to some friend in order that no time may be lost in having it brought down.

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A. I don't remember about that, whether it was or was not.

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A. I don't remember; the train may have been a little late; I think about 4 o'clock in the afternoon.

Q. How long were you in coming?

A. Something less than 24 hours. I don't remember whether the train was behind time or not. It was about two hours late generally.

Q. What time of day did you say you left?

A. I think about four o'clock in the afternoon. Trains have changed time since then.

Q. When did you get here?

A. Early in the afternoon on Sunday.

Q. What do you mean by that?
A. Early in the afternoon.
Q. What do you call early in the afternoon?
A. Between 1 and 2 o'clock. I don't know just what time I left Wichita; the train may have been an hour or two late.
Q. Did you testify in the other trial that you got here about noon?
A. I don't know; I don't remember. I got here about 1 o'clock, — guess.
Q. Did you get mail at Wichita the day you left there?
A. I got mail every day and got my mail that day, I believe.
Q. What time did you reach Judge Henry's office on the morning of the 12th?
A. Somewhere between nine and ten o'clock.
Q. How long did you remain there?
A. I guess about half an hour; it may have been a little longer— not quite so long, perhaps.
92 Q. Did you not testify on the other trial that you were there an hour and a half?
A. No; I don't think I did.
Q. Did you not on the other trial, in answer to a question put by me, "How long were you there in Judge Henry's office? A. It may have been an hour or an hour and a half"?
A. I don't think so; I don't think that I ever staid there that long; I don't think I ever staid in anybody's office an hour and a half.
Q. Did you not, in answer to a question put by me on that trial, "How long were you there in Judge Henry's office? A. It might have been an hour or it might have been an hour and a half"?
A. No; I don't think I staid anywhere that long.

Defendant's counsel objects because it is cross-examination of matter brought out in answer to the previous question, which, of itself, was not cross-examination.

Q. Did or did you not make such an answer?
A. I don't remember.
Q. Did I not, immediately after, ask this question: "How long were you there?" and did you not answer, "I could not tell; I was probably there half an hour"?
—. I think so, but I don't remember. That is more reasonable than the other.
Q. When you met Mr. De Sollar the first time, what was the first thing you said to him?
A. I told him who I was; introduced myself.
Q. What occurred next?
A. I asked if that was Mr. De Sollar. I told him who I was and what I called to see him about.
Q. I asked you what you said. I want you to give the language you used in addressing him.
A. I don't know any different than what I have said. I told him

I was Mr. Hanscome, of Wichita; I owned the lots on Clark-
93 son street and called to see if he wanted to buy them, but that I would not stand by the trade made by Judge Henry.

Q. What was the first thing you said before he made any reply?

A. I told him I was Mr. Hanscome, from Wichita; introduced myself, as I said before.

Q. What response did he make to that?

A. Probably that he was glad to see me; I don't remember just what.

Q. What occurred next?

A. I told him I was the owner of those lots on Clarkson street that we had been talking about through Judge Henry; about his trading for.

Q. Did he make any reply to that?

A. I said something more.

Q. I asked you to tell what was said.

A. I didn't know that you wanted me to tell any more; I have been saying it several times. I said I was the owner of those lots that he had been talking with Judge Henry about trading for; that I had seen the agreement; I can't say just what was said. After that I saw De Sollar and told him that I had seen the agreement between him and Judge Henry; that I had come from Judge Henry's office, and I told him (De Sollar) that I repudiated that agreement; that I should not hold to it; that I would not ratify it.

Q. Then that was all said before he said anything?

A. I did most of the talking then.

Q. When was it that you found out that these lots were worth more than Mr. De Sollar was to give for them by this agreement?

—. Well, I found it out after I first arrived in Denver.

Q. Between one and two o'clock on Sunday?

A. Well, on Monday morning.

Q. I think you said on the trial of the other cause that you learned it Sunday afternoon.

94 A. I don't remember that I said Sunday. It would not have been strange if I had found it out on Sunday afternoon.

Q. What time of day did you meet Mr. De Sollar the first time?

A. I should say about 11 o'clock, perhaps, in the forenoon—between ten and eleven in the forenoon.

Q. On the 12th Mr. De Sollar told you he did not know whether he could raise the money before the 24th?

A. Yes, sir.

Q. And repeated it on the 13th?

A. Yes, sir.

Q. And on the 15th?

A. Yes, sir.

Q. And on the 16th?

A. I don't remember.

Q. What day was it you met him on 17th and Curtis?

A. I don't know.

Q. Did you meet him on 17th and Curtis at all?

A. It was on 16th street.

Q. You said 17th and Curtis.

A. You said 17th and Curtis and I said 17th because you said so, but it was on 16th.

Q. Then it was on 16th instead of 17th and Curtis?

A. Yes, sir; I mean 16th and Curtis.

Q. What time of day was it that you took the abstracts to Mr. De Sollar?

A. It was early in the forenoon.

Q. What do you call early?

A. I should think about 9 o'clock in the morning; my impression is that it was about that time that I went there, up to Mr. De Sollar's school-room—I think between 9 and 10 o'clock on Wednesday morning, March 15th.

Q. According to your understanding the abstracts were examined and passed upon within a couple of hours after that time?

A. Yes, sir.

Q. Did you hear Mr. Malone's testimony on the other trial when he said he believed he examined the abstracts the day after
95 you got them and examined them in his office the day after he got them?

A. I heard his testimony; I don't remember about that.

Q. Which do you think would be most likely to remember the time that you took them to his office as he did the work?

A. I think I had more interest in them than he.

Q. When you were at Malone's office did you talk about the same thing that you did at Judge Bentley's office?

A. Yes, sir.

Q. Did you explain to Mr. Malone that your warranty was good and that you were abundantly responsible?

A. I do not remember about that. No; I don't think I did; I'm not positive about that.

Q. Did you not testify upon the other trial as follows:

"Q. You had a talk trying to convince Mr. De Sollar that the Dubbs receipt was of no consequence—that your warranty deed was good?

A. Yes, sir; and I said it was a mere blackmailing scheme to extort money from me. *A.* I did tell him that.

Q. You went with him to Malone's office to convince Malone?

A. Yes, sir."

Did you testify to that on the trial of the other cause?

A. I presume so; I don't remember.

Q. When you went to Mr. De Sollar's office the morning after the paper was written which you say your names were erased from, hadn't Mr. De Sollar already prepared a copy of that paper?

A. Not to my knowledge. No, sir; he had not, but said he would copy it then, and did make a copy.

Q. You insisted on having original of that paper?

A. Yes, sir.

Q. You were not content to take the copy to Judge Bentley?

A. No, sir. My name was signed to it and I wanted the original.

Q. Why did you insist on having the original?

A. Because he insisted on having it.

96 Q. You verified the copy with him, did you?

A. No, sir; no.

Q. You were offered an opportunity to do so?

A. No, sir; I think not. At first he objected to copying it, but he did set down to his desk and made a copy of it.

Q. He did copy it then?

A. Yes, sir; I urged him to do it.

Q. And didn't you have an opportunity to compare them?

A. I suppose I had an opportunity.

Q. Inasmuch as you both signed the paper the night before, what reason did you have for not wanting the copy?

A. I thought there was some trick about the Dubbs receipt or something, and that was the reason he had refused to receive my warranty deed, and I wanted it because I had signed it.

Q. So you wanted to take the original then, so that if it wasn't such a paper as you thought you had signed you could take the name off?

A. Because I mistrusted something; because he first gave me the copy and he kept the original.

Q. In thinking the matter over during the night you thought you ought not to have signed any contract?

A. I thought I had done something I ought not to.

Q. Did you tender Mr. De Sollar a deed of this property when you met him on the night of the 21st?

A. I asked him if he would accept a deed.

Q. Answer my question.

Defendant's counsel objects, as it calls for the expression of Mr. Hanscome's meaning of a technical word.

Q. You can answer it all the same. Go on.

A. I told him I would give him a deed if he would accept

97 it. I asked him if he would accept it.

Q. Then you told him you would give him a deed?

A. To my understanding, I did.

Q. You didn't have a-y deed with you?

A. No, sir.

Q. And you didn't offer any?

A. I told him I would give him the deed if he would accept it.

Q. I asked if you offered any.

A. He refused it.

Q. Did you offer him a deed or say you would make a deed?

A. I probably told him I would give him a deed if he would accept it—my warranty deed.

Q. When was it you told De Sollar if he wanted the Dubbs receipt removed he must do it?

A. I told him that several times.

Q. When first?

A. I told him several times. I don't remember when I said I would make it for him if he would accept it, but I think it was about the 15th of March was the first time.

Q. Then the 15th of March was the first, was it?

A. Yes; it was the first time, I believe.

Q. On the occasion of your meeting Mr. De Sollar on the corner of 16th and Curtis what did he say to you?

A. Something about fixing up the matter. I don't remember.

Q. Who was with him?

A. I don't know that there was any one particularly. There were plenty of persons passing the street at the time.

Q. Have you ever since seen any person who was with him at that time?

A. I don't know. I could not testify in court that there was any one that I knew. There was a dozen others crossing the street. I think there was some man with him.

Q. In the conversation between you and Judge Henry on the morning of the 12th you say Judge Henry showed you this contract?

98 A. He did.

Q. You told him then that you had received his letter?

A. He said that he was sorry I came.

Q. Did you tell him that you had received his letter?

A. I probably did; yes, sir.

Q. Did he then tell you that of the $200 recited to be paid there was paid him only $150, the other $50 being a portion of his commission which he was giving up in order to make the trade?

A. He did not.

Q. Anything like it?

A. He may have said something of that kind or something about the payment of the $50.

Q. Did he not tell you in that conversation that he had only received $150 in money?

A. No, sir.

Q. Did he not tell you that there was money in his hands besides the $50 that he had sent you from Mr. De Sollar, out of which he was to keep his part of a commission?

A. No, sir.

Q. How did you find out that he had that additional sum of money?

A. Mr. De Sollar told me. He said he had paid him $200.

Q. When was that?

A. On the forenoon of the 12th day of March, 1888.

Q. During the first conversation that you had with him?

A. During the first conversation; yes, sir.

Defendant's counsel offered Exhibit 2 and Exhibit 3 in evidence.

Complainant's counsel objects to exhibits being put in evidence as being irrelevant, immaterial, and incompetent.

WILLIAM B. HANSCOME.

99 Continued by consent of counsel for the further taking of testimony to Saturday, December 7th, 1889.

JOHN W. WEBSTER, *Examiner.*

Subscribed and sworn to before me this 11th day of December, A. *A.* 1889.

JOHN W. WEBSTER, *Examiner.*

The defendant produces JOHN J. HENRY, a witnesses produced on the part of the defendant, who, being duly sworn to testify the truth, the whole truth, and nothing but the truth in this case, deposed and testifies as follows:

Question by Mr. BENTLEY: Mr. Henry, where do you reside?

A. On Humboldt St. near 28th, in Denver.

Q. Do you know Mr. Hanscome and Mr. De Sollar?

A. Yes, sir.

Q. Did you have negotiations with Mr. De Sollar in the early part of the year 1888 for the sale of lots on Clarkson street from Mr. Hanscome to Mr. De Sollar?

A. Yes, sir; I had, in March, 1888.

Q. Are you the John J. Henry who signed an agreement in the capacity of agent for Mr. Hanscome for the sale of three lots on Clarkson street to Mr. De Sollar on the 3rd of March, 1888, which agreement is the subject of controversy in this action?

A. I made the sale to Mr. De Sollar as agent for Mr. Hanscome, and wrote and signed the agreement.

Q. How much did Mr. De Sollar agree to give Mr. Hanscome for those lots?

100 Objected to by complainant's counsel; contract is the best evidence.

A. Mr. De Sollar really agreed to give $4,950 for the property.

Cross-examination by complainant's counsel, Mr. PHELPS:

Q. Does the contract recite that as the sum?

A. No, sir; I think it recites the sum as being $5,000.

Q. Which is correct?

A. We were on a hard deal, Mr. De Sollar and I; we talked about it a good many times and he—I agreed to take off $50 from my commission so that Mr. Hanscome should claim the sale as being made at $5,000.

Q. Do you mean that so far as Mr. Hanscome was concerned it was the same as if the property had been sold for $5,000? A.

Defendant objects; question calls for improper testimony.

A. Yes, sir.

Q. Was there any loss to Mr. Hanscome by this concession which was made to De Sollar?

Defendant objects; that question calls for incompetent testimony and not cross-examination.

A. I did not consider there was any.

Q. Were you then and are you now acquainted with the usual commissions on such sales of a broker?

Defendant objects; not cross-examination; testimony called for is incompetent and immaterial.

A. I think I was and am.

Q. What were they?

Same objection.

A. The commissions as established by the real-estate ex-
101 change are 5 per cent. on the first $2,500 and 2½ on the excess.

Q. Do you remember of seeing Mr. Hanscome on Monday following the day of his arrival in Denver in March, 1888?

Defendant objects; not cross-examination.

A. I remember seeing Mr. Hanscome in my office the next morning after the evening he said he arrived here. Whether it was Monday or not I don't know.

Q. Did you at that time acquaint him with what you had done?

Same objection as last.

A. I did acquaint him with what I had done; showed him the article of agreement between De Sollar and myself and told Mr. Hanscome that I had written him the purport of the transaction.

Q. Did you or not tell him at that time the amount of cash which had been paid to you by De Sollar?

Defendant objects as not cross-examination and calls for incompetent and immaterial testimony.

A. I think I told Mr. Hanscome so and showed him the article of agreement which we had both signed and specified the whole thing, the amount it sold for and the cash I had received.

Q. Did you in fact receive $200?

Same objection.

A. I forget just at this time whether it was $150 or $200 I received. I suppose the article of agreement which we signed will tell.

Q. Did you tell Mr. Hanscome in that conversation the amount you had agreed to give Mr. De Sollar out of your commission?

Same objection.

A. I think I told him.

102 Q. What did he say to that?

Same objection.

A. I don't recollect that Mr. Hanscome made any objection to it except that the instructions he gave me were to sell for ½ cash, and I had agreed to wait until the 24th of March for the payment of half cash. He objected to that, for he said it wasn't half cash. He said also that he could get more money for the property.

Q. Did he state to you in that conversation anything about having received your letter?

Same objection.

A. Yes, sir; he said he had my letter with the draft in it for $50.

Q. When and where did he say he received it?

Same objection.

A. I am a little confused about that. He either said that he received it at the depot in Wichita where he had gone to take the cars for Denver or else the letter followed him to Denver and he received it after he got here. I can't fix in my mind which statement he made about receiving the letter, but anyhow he had it when he met me.

Q. What is you- best recollection as to whether he said he received it as he was leaving Wichita or on his arrival here?

Same objection and the question is suggestive and leading.

A. It is a little difficult for me to say which he said as to when or where he received it, but I certainly heard from somebody that the letter was brought to him while he was waiting for the cars in the depot in Wichita.

Q. Did that letter bear date the day it was written?

103 A. It was written the day it was dated, surely.

Q. When was it mailed?

A. I think it was mailed in its date, the 4th of March; as to that I can't say positively, but I think I wrote Mr. Hanscome right after the transaction was made, and the transaction was made the 3rd of March.

Q. Speaking about the mailing now?

A. It was doubtless mailed the day it was written.

Q. Did you at any time after Hanscome's arrival here have the abstract to the title of the property?

Defendant objects as not cross-examination and immaterial.

A. Yes, sir; I certainly had the abstract of title.

Q. From whom did you receive them and what did you do with them?

Same objection.

A. This has been over a year ago. I can't distinctly remember, but my impression is I received it from Mr. Hanscome. I know I did receive it. I think Mr. Hanscome gave it to me. I don't know what I did with it. I know that Mr. De Sollar received it, but whether I gave it to him or Mr. Hanscome took it of him I don't know.

Q. When you had them had they been certified down at the abstract office to that date?

A. You mean when I first saw it?

Q. Any time when you had them.

A. I can't give a positive answer to that.

A. I want to say that it must have been brought down to a pretty late date because there was a certain receipt of money received from

a former sale of the same property; receipt for moneys paid on that sale; to which receipt and record Mr. De Sollar objected.

Q. Don't you know, Mr. Henry, by what Mr. Hanscome said that he had the abstract certified down after he came here before,
104 they were given to De Sollar?

A. I haven't positive recollection about that, but as that is the natural course of business I have reason to believe it was done, but I really don't remember from my own knowledge whether it was brought down to date or not.

Redirect examination by Mr. BENTLEY:

Q. Did not Mr. De Sollar and Mr. Hanscome together show you the abstract and call your attention to that receipt in your office at the time you are now referring to as having seen the abstract with that receipt upon it?

A. I don't recollect that they did. I do recollect seeing the abstract with the receipt on it, but who showed it to me I have no recollection; I wish I had.

JNO. J. HENRY.

Subscribed and sworn to before me this 7th day of December, A. D. 1889.

JOHN W. WEBSTER, *Examiner.*

The defendant produces FREDERICK W. HERBERT as a witness on his behalf, who, being duly sworn to testify the truth, the whole truth, and nothing but the truth in this case, deposes and testifies as follows:

Question by Mr. BENTLEY: Mr. Herbert, where do you reside?

A. In Denver.

Q. Do you know the complainant and the defendant in this case?

A. Yes, sir.

105 Q. Were you present at an interview between Mr. De Sollar and Mr. Hanscome in March, 1888, when they had conversation in relation to Mr. Hanscome's lots on Clarkson street?

A. Yes, sir.

Q. State the date and the place where that interview occurred.

A. The evening of the 21st of March, at the Opera-house block.

Q. Give the locality in the Opera-house block.

A. I think it's on the 4th floor; southwest part of the building.

Q. Where in respect to Mr. De Sollar's college-rooms?

A. In the hall just outside the school-room.

Q. About what time in the day?

A. About 7.30 in the evening.

Q. Name the parties who were present besides yourself.

A. Mr. Hanscome and Mr. De Sollar.

Q. State what took place at that interview, giving the conversation *pro* and *con.* as nearly as you can.

A. First I was introduced to Mr. De Sollar, and after a few words in way of passing conversation Mr. Hanscome said he had come to offer Mr. De Sollar a deed to the property of Clarkson street. Mr.

De Sollar then said that he would not accept a deed unless some receipt for a previous sale was taken from the record. Mr. Hanscome then said that it was the last time he would offer him a deed, and took $50 in gold from his vest pocket — tendered it to Mr. De Sollar, saying that that was all the money he had received from Judge Henry and supposed it belonged to him. Mr. De Sollar then seemed a little angry at that, saying words to the effect of What do you take me for? and Is that the way you do business in Kansas? Mr. Hanscome replied that he guessed that was the right way to do business here. Then Mr. De Sollar said that he held that
106 receipt of Henry's and would put it on record and cloud the title in such a way that Mr. Hanscome or his heirs would never be able to dispose of the property. Mr. Hanscome replied that he would make him suffer for it if he did. With a good evening I think we departed then.

Cross-examination:

Q. You are Mr. Hanscome's son-in-law?

A. Yes, sir.

Q. You went to Hanscome, at the St. James hotel, and went with him from there to De Sollar's office to see what transpired?

A. Yes, sir.

Q. You had talked the matter over with Mr. Hanscome considerably at that time?

A. No, sir; only that he was finding a sale of the lots.

Q. You have had a number of talks with him since about this matter?

A. Yes, sir.

Q. You were witness on the trial of Hanscome *vs.* De Sollar, I believe?

A. Yes, sir.

Q. Did you on that occasion state that De Sollar said, "What do you take me for; is that the way you do business in Kansas"?

A. I don't recollect my exact language at that time; I testified something like that in substance.

Q. Did you in that testimony not say, "That in the conversation Mr. De Sollar didn't say what receipt, but just said that receipt"?

A. I don't recollect now, sir.

FREDERICK W. HERBERT.

Subscribed and sworn to before me this 11th day of December, A. D. 1889.

JOHN W. WEBSTER, *Examiner.*

107 The defendant produces JOHN A. BENTLEY as a witness on his behalf, who, being duly sworn to testify the truth, the whole truth, and nothing but the truth in this case, deposes and testifies as follows:

Questions propounded by the examiner at the request of Mr. Bentley:

Q. Are you the defendant's attorney?

A. I am.

Q. Do you know the complainant?

A. I do.

Q. When and under what circumstances did you first make his acquaintance?

A. I first made his personal acquaintance a few days before the 20th day of March, 1888. He came to this my office either with Mr. Hanscome or immediately following Mr. Hanscome, which I cannot state; but when he came in Mr. Hanscome introduced me to him and stated that he had brought him up that I might explain to him about the Dubbs receipt on the Clarkson-street lots.

Q. What transpired on that occasion between the parties and yourself?

A. After the introduction which I have stated I explained to Mr. De Sollar that the Dubbs receipt to Chittenden had been placed by Dubbs without any authority from Hanscome, and that it was a palpable fraud, as he could easily see, because it undertook to sell the three lots, which were worth $1,500 apiece, for $1,500 for the three and upon an earnest money of $25; that Mr. Hanscome regarded it as a blackmailing scheme, and that I had been made familiar with the transaction at about its date and had *been* advised and still advise Mr. Hanscome that it was a fraud and that he ought not to pay attention to it in the way of negotiating with Mr. Chittenden or with Dubbs for its removal. I further explained to Mr. De Sollar that he could see very well that if Mr. Hanscome attempted to obtain the removal of the receipt under the force
108 of a contract for the sale of the property to him that the demands of Mr. Chittenden and Mr. Dubbs for removing the pretended claim were likely to be very exorbitant, and that it was my advice to Mr. Hanscome to have nothing whatever to do with the matter so far as those parties were concerned. Mr. De Sollar insisted that he held Mr. Hanscome's contract made by Mr. Henry for the sale of these lots, which required Mr. Hanscome to remove that cloud from the title. I replied to him that the contract which he referred to had no validity whatever according to Mr. Hanscome's views and according to my advice to him, but that Mr. Hanscome had explained all the circumstances connected with the negotiation, including his personal relations with Mr. Henry, and had said that he thought the transaction between Mr. Henry and Mr. De Sollar had been in entire good faith, and that he was willing to make a deed to the property upon the general terms of that transaction, provided he could get the one-half cash immediately, so that he could use the money in some transaction which he then had in view with other parties, and if Mr. De Sollar was willing to accept Mr. Hanscome's warranty deed for the property and make the immediate payment Mr. Hanscome was still willing to make the conveyance, and I advised him to that course. I am unable to state

whether Mr. De Sollar positively declined to accept the conveyance, but it is my recollection that it was left as it were for further consideration, but about that I am not certain. That certainly is my present impression.

Defendant now offers in evidence a certified transcript from the clerk and recorder's office of the county of Arapahoe, which is marked Exhibit 4 and which is hereto attached, to be a part of the evidence in this case.

JOHN A. BENTLEY.

109 By consent of counsel the further taking of testimony is continued until Tuesday, the 10th day of December, at 7.30 p.m.

JOHN W. WEBSTER, *Examiner.*

Subscribed and sworn to before me this 11th day of December, A. D. 1889.

JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this Tuesday, the 10th day of December, A. D. 1889, 7.30 p. m., counsel for the parties respectively being present, following proceedings were held:

Rebuttal.

Complainant recalled, testified as follows:

Q. Did Mr. Hanscome, in any conversation with you, say that the payment provided for in the agreement wasn't half cash, as he had authorized him to sell the property?

Defendant's counsel objects that the question is leading; that the witness was fully interrogated upon that matter and testified, and that the evidence called for is not rebutting testimony.

A. He never did.

Q. Did he ever ask you if you thought the agreement made Mar. 3rd and some cash paid would be good business to consider a valid agreement, when the cash or balance of the cash would not be paid until the 24th of March?

110 The defendant makes the same objection, that that is a leading question.

A. He never did.

Q. Did he ever tell you that Henry had no authority to receive or receipt any money for him?

The defendant makes the same objection as to the preceding question.

A. He never did.

Q. Did he ever tell you that he would allow the matter to stand open for two or three days to see if you could raise the cash or anything to that effect?

Defendant makes the same objection as to the last question.

A. He never did.

Q. Did he ever tell you that he had a trade in view and wanted your cash payment to complete that trade, and if he could get it was willing to let the matter go through or anything to that effect?

Defendant makes the same objection.

A. No, sir.

Q. Did you ever tell him that you didn't know whether or not you could raise the money required as the cash payment?

Defendant makes the same objection as to the last question.

A. No, sir; I did not.

Q. Were you or not prepared to pay the money at any time after Hanscome's arrival here?

Defendant objects that is not rebuttal testimony and the witness has been already fully questioned.

A. I was prepared to pay the money from the time the contract was made.

111 Q. Please answer the last question directly.

A. I was prepared.

Q. I now move to strike out the answer which was given to the question as first propounded.

Q. Did Hanscome ever tell you that an agreement made the third of Mar. for half cash 21 days latter could not be called spot cash or anything to that effect?

Defendant objects, the same as to the first question proposed.

A. He never did.

Q. Did you ever say to him that you thought thirty days ought to hold or anything to that effect?

Defendant objects, the same as to the last quession.

A. No, sir.

Q. Did Hanscome ever say to you that he would bring you the abstract if *if* you thought there was a prospect of your getting the money?

Defendant objects, the same as to the last question.

A. He never did.

Q. In the conversation between yourself and Hanscome on the night of the 21st of Mar. did he offer you a deed or say that he was ready to deliver the deed or make the deed?

Same objection as to the last question.

A. He did not.

Q. Did you say in that conversation that you would not take a deed as long as the Dubs receipt was uncanceled or anything to that effect?

Same objection as to last question.

A. I did not.

Q. Prior to that time what, if anything, had you done
112 respecting the Dubs receipt?

I object to that as not rebuttal, as incompetent and immaterial.

A. I had been to see Mr. Chittenden, and had made arrangements with him to give me a quitclaim, and on the evening of the 17 or 18th I took a gentleman by the name of Mr. Kilburn to witness a conversation between Mr. H. and myself, which did take place on that evening. I then informed H. that I had seen Chittenden, and that if he, H., would not remove that receipt I would do it at my own expense; to get his deed ready; that I wanted this matter closed immediately.

Defendant moves to strike out all that part of the answer commencing with the statement that witness took a gentleman by the name of Mr. K. to witness the conversation with Mr. H. on the evening of the 18th because the same is not responsive to the question and is not rebuttal and the witness has already been examined upon the subject.

Q. Did you ever at any time say to Mr. H. that you would not accept a deed from him unless the receipt had been removed or anything to that effect?

Defendant objects that the question is leading and suggestive and the testimony called for is not rebuttal and the witness has already been fully interrogated upon the subject.

A. Never.

Q. State when, if at any time, you saw H. subsequent to Mar. 24, 1888, and prior to the time when the suit was brought by him against you known as No. 2367 on the law docket of the cir-
113 cuit court.

D. objects that the testimony called for is immaterial and incompetent.

A. I can't recall any time that I met Mr. H. at any time after the 24th of Mar. until the day before this first trial.

Q. Did you in a conversation with Mr. H. on or about the 20*st* of Mar., 1888, or at any other time destroy any papers that had been written or prepared by any one referring to or in any manner connected with transactions between yourself and Mr. H.?

A. I did not.

Q. Was ever one copy made of the memorandum of which you and H. signed your names on the 20 of Mar., 1888, by yourself or any one acting for you or by any one to your knowledge?

Defendant object-; testimony called for is not rebuttal and the witness has already been interrogated upon the subject.

A. There was only one duplicate copy made.

Q. Look at this paper and see what it is.

The paper is shown witness; is marked Exhibit 5.

A. I recognize it as an article that — drawn up on the 20th of Mar., 1888.

Q. Is this the first paper?

A. That is the duplicate.

Q. When was it prepared?

A. That was prepared on the evening of the 20th of Mar., 1888, between the hours of—well, after supper—after seven o'clock it was.

Q. What has been erased from the bottom?

A. My signature.

Q. Is this the same paper referred to in your direct examination as a copy or duplicate of a certain agreement signed by you and H. on the afternoon of Mar. 20?

A. It is.

114 It is hereby stipulated, inasmuch as the original letter of Mar. 6th, 1888, written by John J. Henry to William B. Hanscome has been mislaid, that the transcript thereof contained in the cross-examination of the witness Hanscome on the taking of testimony before the *the* examiner is a correct transcript or copy of the original, and that it is the letter enclosing the draft of 50 dollars to Hanscome, and that said transcript or copy may stand in lieu of the original.

Q. Did Mr. Hanscome ever tell you that he had called to see if you wanted to buy the lots on Clarkson St. that he would not stand by the trade made by Judge Henry or that he would repudiate*d* what Judge Henry had done or anything to that effect?

Defendant objects; testimony called for is not rebuttal and that the witness has once been fully interrogated upon the subject.

A. He never did.

Cross-examination waived.
Testimony closed.
December 10th, 1889.

H. S.
HERBERT S. DE SOLLAR.

Subscribed and sworn to before me this — day of December, A. D. 1889.

—— ——, *Examiner.*

115 *Examiner's Report.*

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

To the honorable the judge of the circuit court of the United States for the district of Colorado, in chancery presiding:

I, John W. Webster, one of the examiners in chancery of the circuit court of the United States for the district of Colorado, and examiner herein, by consent of counsel, to the testimony and proofs

in this cause, do hereby certify unto your honor that I have taken the testimony of Herbert S. De Sollar, Montie Kilbourn, Judson P. Etheridge, F. D. Morse, William H. Malone, on behalf of the complainant, and William B. Hanscome, John J. Henry, Frederick W. Herbert, and John A. Bentley, on behalf of the defendant, who, previous to the commencement of their respective examinations in this cause, were by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties; that the testimony was taken and reduced to writing before me and read over to the said witnesses in their presence and in the presence of such of the counsel and parties as were in attendance before me, and thereupon the same was subscribed and sworn to by said witnesses respectively, the oath being administered by me as examiner, as set forth in said transcript of testimony.

116 I also certify and report that the complainants filed Exhibit 1, composed of Exhibits A, B, C, D, E, F, & G & 5, which are hereto attached and made a part of the evidence in this case; also defendant filed Exhibits 2, 3, & 4, which are attached and made a part of the evidence in this case, and also filed depositions of Mitchell Benedict, by stipulation of counsel, which is hereto attached and made a part of the evidence in this cause.

I have folioed the testimony from folio 1 to 243, in red-ink figures on the left-hand margin thereof, and the taking of testimony was continued from time to time as stipulated by counsel and noted herein.

And I further certify and report that I am not an attorney, solicitor, or of counsel for either of the parties in this suit or otherwise interested in the event thereof.

All of which is respectfully submitted.

JOHN W. WEBSTER, *Examiner.*

Denver, Dec. 14th, 1889.

Examiner's Fees.

Complainant, Dr.

To taking 108 folios testimony, at 20	$21 60
" ½ of one copy of the whole of testimony per order of counsel, 243 folios, at 10	12 15
1 day's attendance	3 00
Marking & filing 2 exhibits, at 10	20
Administering 5 oaths, at 10	50
Total examiner's fees	$37 45

Received pay't of complainant.

JOHN W. WEBSTER, *Examiner.*

December 14th, 1889.

117 Defendant, Dr.

To taking 135 folios testimony, at 20	$27 00
" ½ of one copy of the whole testimony per order of counsel, 243 folios, at 10	12 15
1 day's attendance	3 00
Marking & filing 3 exhibits, at 10	30
Administering 4 oaths, at 10	40
Total examiner's fees	$42 85

Received pay't of J. A. Bentley, Esq., solicitor for defendant.
JOHN W. WEBSTER, *Examiner.*

December 12th, 1889.

118 EXHIBITS A, B, C, *E*, E, & F. Introduced in Evidence for Complainant as Exhibit I. John W. Webster, Examiner.

In the Circuit Court of the United States, District of Colorado.

HERBERT S. DE SOLLAR, Complainant,
vs.
WILLIAM B. HANSCOME, Defendant. } In Equity. No. 3427.

It is hereby stipulated and agreed that the annexed exhibits marked A, B, and C are true copies of the complaint, answer, and reply respectively in the case of William B. Hanscome *vs.* Herbert S. De Sollar, No. 2367 on the law docket of this court, and tried to a jury in said court on the 10th day of May, 1889, and that the annexed exhibits marked D and E are true copies of the verdict of the jury and of the judgment entered thereupon in this court in the said action at law on the 10th day of May, 1889, and that the annexed exhibit marked F is a true copy of the charge of the judge before whom the case was tried to the jury at said trial.

And it is further stipulated and agreed that said exhibits respectively may be used by either party upon the trial and hearing of this cause without further or other exemplification or proof thereof, and for the purposes of this cause shall stand in all respects
119 as and for the originals and subject to all objections which might be made to such originals.

It is further stipulated and agreed that the deposition of Henry K. Goldberg taken and read in behalf of the defendant in the aforesaid suit at law may be used by the complainant upon the hearing of this cause in the same manner and with the like effect as if the said deposition had been regularly taken in this cause in behalf of the complainant, but the defendant shall have the right to interpose such objections and exceptions thereto when used and offered as he may be advised other than that said deposition was not regularly taken in this cause.

It is further stipulated and agreed that the said Herbert S. De Sollar shall proceed to take his testimony-in-chief which he desires

to take before the examiner in support of his bill and complete the same by or before the 4th day of December, A. D. 1889; that the said William B. Hanscome shall have thereafter until December 16th, 1889, to take his testimony in answer and also in support of his cross-bill and thereafter the said complainant shall have five days to take his testimony in rebuttal and in answer to the testimony in support of the cross-bill, and said defendant shall have thereafter until December 24th, 1889, to take his testimony in rebuttal of complainant's testimony in support of his answer to the cross-bill.

It is further stipulated and agreed that William B. Hanscome, plaintiff, and F. W. Herbert, a witness for him, and Herbert S. De Sollar, defendant, and Judson P. Etheridge, Monti Kilburn, and Henry K. Goldberg, who testified for said defendant, are the only witnesses who were sworn or testified in said cause No. 23067 on the law docket of said court as aforesaid as to any matter in controversy in said cause, save and except one E. W. Merritt and M. Benedict, who testified only to some matters bearing simply
120 upon the question of damages. If the complainant in this cause shall elect to offer herein, as bearing upon the question of what was tried in the said cause on said law docket, the evidence of the five witnesses first above named, he may use the extension of the stenographer's notes as to the first four of them (which extension of the stenographer's notes is hereunto annexed and marked "Ex. G"), and the deposition of the other without being obliged to prove the correctness thereof, as being the testimony in fact given on the said trial of said cause on said law docket and subject to all objections which the said William B. Hanscome may desire to interpose, except as to the matter of the proof of said evidence hereby agreed to.

BENEDICT & PHELPS, *For Comp'l't.*
J. A. BENTLEY, *For Def't.*

121 EXHIBIT A.

United States Circuit Court, District of Colorado.

WILLIAM B. HANSCOME
vs.
HERBERT S. DE SOLLAR.

The plaintiff for a complaint in this action shows to the court that he is a citizen of the State of Kansas and the defendant a citizen of the State of Colorado and the amount in dispute in this cause exceeds the sum of two thousand dollars.

And the plaintiff further shows that he is and at all the times mentioned herein was the owner of lots four, five, and six, in block number thirty-six, in Park Avenue addition to the city of Denver, county of Arapahoe, State of Colorado, of the value, altogether, of the sum of seven thousand five hundred dollars and upwards.

And the plaintiff further shows that on or about the 24th day of

March, 1888, at or about the hour of four o'clock in the afternoon, the defendant wrongfully and for the purpose of incumbering and clouding the plaintiff's record title to the said premises, so as to prevent him from the enjoyment thereof and selling and disposing of the same, intending thereby to injure and damage the plaintiff, without any right or authority and without the consent of the plaintiff thereto, caused to be entered and spread upon the official records of titles to lands in said county kept by the recorder of deeds memoranda substantially in the words and figures following, viz:

"WICHITA, KANS., *Feb.* 3*d*, 1888.

"J. J. Henry, Esq., Denver, Colo.

"DEAR SIR: Yours of the 30th is rec'd, and in reply will say that I am not particularly anxious to trade my unincumbered lots for encumbered improved property, but I will look into the matter and advise you if I do not make a trip to Denver soon, as I may conclude to do in a few weeks. Where is Ellsworth Str. & S. B.—how for from the Circle r'road depot?

"The 3 lots on Clarkson St. I will not sell for less than $5,000 cash or its equivalent and pay the usual commission for selling. What is the partie's name that wants to trade the brick house?

"Yours truly, W. B. HANSCOME."

122 "WICHITA, KANS., *Feb'y 7th*, 1888.

"Judge J. J. Henry, Denver, Col.

"DEAR SIR: Yours is rec'd. As I have before written you, the (3) lots on Clarkson St. I will not sell for less than $5,000 for the 3. I was offered $4,500 cash for those lots, nett, no commission, 6 months ago, but declined. If the party wants them at the price I have named, part cash, balance reasonable time at 8 per ct. in'st, I will make a deed of the same.

"Yours truly, W. B. HANSCOME."

"WICHITA, KANS., *Feb.* 29, 1888.

"Jo-n J. Henry, Esq., Denver, Col.

"DEAR SIR: Yours of the 25th is rec'd; am sorry you have to work so hard to sell my lots on Clarkson St., for I am not so very anxious to close them out even at the $5,000.00, the price I held them at some time since. If I make any change on them it will be to advance the price, as I had just about as soon hold them as to sell for $5,000, and I think the time is up that I offered to sell them for that sum. Friends have advised me not to sell them now, as property was advancing in that section. In no case should I sell them less than $5,000, and I should insist on having at least ½ cash and the balance in one and two years at the longest, interest at 8 per ct. & payable semi-annually, and I should prefer to make the time shorter. As I now expect to be in Denver on or before March 10th, perhaps we can then arrange about a sale, if not dis-

posed of before, but, as I have before written, I am not at all anxious to sell at my first offer of $5,000 and half cash.

"Yours truly, W. B. HANSCOME."

"DENVER, COLORADO, *March* 3, 1888.

Know all men by these presents that I, John J. Henry, acting as agent for Wm. B. Hanscome, of Wichita, Kansas, have agreed to sell to H. S. De Sollar, of the city of Denver and State of Colorado, the three lots owned by the said Wm. B. Hanscome, situated on Clarkson Str. between 16th and 15th avenues—15th avenue is known as Colfax avenue—block number- of lots not known, but they are believed to begin the 4th lot from the corner of 16th street and are on the west side of Clarkson St., fronting east. The lots are each 25 ft. on Clarkson St., running back to an alley, and are 145 feet in depth. Said De Solar is to pay five thousand dollars—$5,000—for the lots above described, payments as follows, to wit: Two hundred dollars—$200—in cash this day, the receipt whereof is hereby acknowledged, and twenty-three hundred dollars—$2,300—on or before the evening of the 24th of the present month of
123 March; the remaining sum of the purchase-money, $2,500, one-half, or $1,250, *are* to be due and payable on or before one year from the date of deed, and the other half, $1,250, in two years, on or before, from date of deed, each sum bearing interest at the rate of eight—8—per cent. per annum, interest payable semi-annually; payment on these deferred amounts to be secured by notes and deed of trust on the property now bargained for.

It is understood that a good, sufficient, and satisfactory deed is to be made by the said Wm. B. Hanscome for the said described property on or before the 24th day of the present month of March, at which time the papers are all to be dated and executed. It is also further understood that the property conveyed is to be clean and clear of all incumbrance.

And it is further understood that if the said H. S. De Solar is or should be in default in meeting the second payment herein provided for, then the $200 paid this day shall be forfeited.

JNO. J. HENRY,
H. S. DE SOLLAR."

And the plaintiff further shows that the said lots four, five, and six are the only lots in said block of which he was at the date of said record or at any time previous or subsequent thereto the owner and are the identical lots and premises to which the said memoranda relates.

And the plaintiff further shows that the defendant, by means of the said record and memorandum and because thereof, gives out and pretends that he is entitled to the said lots and a deed thereof from the said Hanscome upon complying with the terms of the said memorandum and thereby prevents persons desiring to purchase said lots from the defendant from so doing, all to the defendant's great damage

And the plaintiff further shows that since the said memorandum

was entered upon the said records he has, at great expense and trouble, endeavored to effect a sale of said lots, and has made agreements and negotiations for such sale with different persons, but in every case such agreements and negotiations have been interrupted and defeated by the aforesaid record and petitions of the defendant, to the plaintiff's great damage.

And the plaintiff further shows that the value of the said lots and the price at which they can be sold in the market is to a great extent dependent upon the chain of the record title under which they may be conveyed upon a sale; that the said record and memorandum in the chain of the record title to said lots interferes with the plaintiff's full enjoyment of said premises and with the ready sale of said lots, depreciates their value in the market, and greatly reduces the price at which without that they might readily be sold, all to the great damage of the plaintiff — five thousand dollars.

Wherefore the plaintiff demands judgment against the defendant for the sum of five thousand dollars and such equitable relief as the nature of the case shall seem to require besides his costs and disbursements of this action.

(Signed) J. A. BENTLEY,
Attorney for Pl'ff.

Dated December 6, 1888.

124 (Endorsed:) 2361. United States circuit court, district of Colorado. William B. Hanscome *vs.* Herbert S. De Sollar. Complaint. J. A. Bentley, plaintiff's attorney. Filed Dec. 6, 1888. (Signed) William A. Willard, clerk.

A true copy.
Teste:
[SEAL.]
WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk.*

125 EXHIBIT B.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court of the Eighth Judicial Circuit within and for the District Aforesaid.

WILLIAM B. HANSCOME, Plaintiff,
vs.
HERBERT S. DE SOLLAR, Defendant.

The said defendant, by Benedict & Phelps, his attorneys, answering the said plaintiff's complaint herein, admits that on or about the 25th day of March, 1888, he caused to be recorded in the recorder's office of Arapahoe county, Colorado, the memoranda mentioned in the plaintiff's complaint herein, the said memoranda consisting, first, of a letter signed by the said plaintiff and dated at Wichita, Kansas, February 3rd, 1888, and addressed to one J. J. Henry, Esq., who theretofore had been and afterwards was the

agent and representative of the said plaintiff in respect to the selling and disposition of certain of the plaintiff's property situated in the county of Arapahoe and State of Colorado, including the property mentioned in the plaintiff's complaint herein; second, of another letter of the same character, also signed by him, the said plaintiff, and addressed to the said Henry and dated February 7th, 1888; third, of another letter, also signed by the said plaintiff and addressed to the said Henry and dated February 29th, 1888, correct copies of which said three letters are set forth in the said plaintiff's complaint, and, fourth, an instrument in writing, signed by the said Henry, as agent of the said plaintiff, and by this defendant as well, concerning the sale by the plaintiff to this defendant of the said property in said complaint mentioned, and correct copies of which said agreement is also in said complaint mentioned; and this defendant, further answering, denies that he caused said memoranda to be entered upon the official records—that is to say, recorded in the recorder's office of Arapahoe county aforesaid—unlawfully or for the purpose of clouding the plaintiff's legal title to the said property or to prevent him from selling or disposing of the same or with an intent or purpose to injure or damage the plaintiff, and also denies that the said recording of the said memoranda was without right or authority; but, on the contrary, avers that he had full right and authority to have the same recorded as aforesaid, and that he caused the same to be recorded to protect his rights and in perfect good faith for that purpose only. Further
126 answering, this defendant denies that he has by the record aforesaid prevented persons desiring to purchase said property from the said plaintiff from so doing; denies that the plaintiff has endeavored to effect the sale of the said lots or made agreements or negotiations, and denies that any such sales or negotiations have been defeated by the record aforesaid, and denies that the defendant hath been in any manner damaged; further answering, denies that the said record of the said memoranda interferes in any manner with the plaintiff's enjoyment of the said premises or with the sale thereof or depreciates the value of said property or reduces the price at which the said property may be sold; and, further answering, this defendant says that on the third day of March, 1888, the said John J. Henry was, by the letters mentioned in the plaintiff's complaint herein, duly made, constituted, and appointed the plaintiff's agent to sell the property in the plaintiff's complaint mentioned; that on that day this defendant in good faith entered into the agreement of that date, a copy whereof is set forth in plaintiff's complaint, and then and there and at the time of the execution thereof paid to the said Henry, as agent of the plaintiff, the sum of two hundred dollars ($200.00), a portion whereof was shortly thereafter paid over by the said Henry to the said plaintiff, and the said plaintiff has never paid back to the said defendant the said sum of two hundred dollars ($200.00) nor offered so to do; that shortly thereafter the said plaintiff, after being fully appraised and personally informed of all that the said Henry had done as his agent aforesaid in the making and executing of the agreement aforesaid

with this defendant as aforesaid, fully approved, ratified, and confirmed the same and continued so to do until shortly prior to the said 24th day of March, 1888, when, this defendant being ready and willing to comply with the said agreement on his part and to take and receive a deed to the said property from the said plaintiff and pay for the same according to the agreement aforesaid, he, the said plaintiff, unlawfully and without cause refused to comply with, keep, or perform the said agreement on his part and continued to refuse to make to this defendant a deed to the said property upon the terms mentioned in the said agreement, and has refused and has since then continued to refuse so to do, and upon the refusal aforesaid this defendant, to protect his own rights, caused to be recorded the memoranda aforesaid, as well and lawfully he might do.

And now, having fully answered, this defendant demands judgment that he be hence dismissed with his costs herein, to be taxed.

BENEDICT & PHELPS,
Defendant's Att'ys.

127 EXHIBIT C.

United States Circuit Court, District of Colorado.

WILLIAM B. HANSCOME
vs.
HERBERT S. DE SOLLAR.

The plaintiff, for a reply to the answer of the defendant herein, denies that John J. Henry was, by the letters referred to in the answer or otherwise, constituted the agent of plaintiff to sell the plaintiff's said lots or to enter into the agreement set out in the complaint, and denies that the defendant entered into the said agreement in good faith, and denies that the defendant, at the time of making said agreement, paid to said Henry, as agent for the plaintiff or otherwise, the sum of two hundred dollars, and alleges that the amount paid by said defendant to said Henry was much less than two hundred dollars and did not exceed the sum of one hundred and fifty dollars, of which said Henry afterwards sent to plaintiff in a letter the sum of fifty dollars and no more, which said fifty dollars the plaintiff tendered to the defendant on the 21st day of March, 1888, and denies that shortly after the making of the said agreement, or ever, he, plaintiff, ratified and confirmed the same, and denies that shortly prior to March 24th, 1888, or ever, the defendant was ready and willing to comply with the said agreement and to take and receive a deed for the said lots from the plaintiff and pay for the same according to the terms of the said agreement, and denies that the plaintiff unlawfully and without cause refused to comply with the said agreement, and denies that the defendant caused the said record to be made to protect his own rights.

J. A. BENTLEY,
Attorney for Pl'ff.

Dated December 18, 1888.

128 EXHIBIT D.

Page 357.

WILLIAM B. HANSCOME
vs.
HERBERT S. DE SOLLAR. } 2361. Action for Damages.

At this day comes the said parties, by their attorneys respectively, and, the said jurors being now all here present and in the jury-box, the trial herein is resumed.

And the said jurors, having heard the evidence produced herein and the instructions of the court, retire to their room under charge of a sworn bailiff to consider of their verdict.

And afterwards and on this day come again the said jurors and on their oaths do say they find for the defendant.

EXHIBIT E.

338.

WILLIAM B. HANSCOME
vs.
HERBERT S. DE SOLLAR. } 2361. Action for Damages.

At this day comes the said defendant, by A. C. Phelps, Esq., his attorney, and moves the court for judgment upon the verdict of the jury herein.

Wherefore it is considered by the court that the said defendant go hence hereof without day and have and recover of the said plaintiff his costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

129 EXHIBIT F.

In the Circuit Court of the United States, May 10th, 1889.

HANSCOME
vs.
DE SOLLARS.

Oral Charge to Jury.

(As revised by Judge Hallett.)

HALLETT, *J.*:

The plaintiff's action, proceeds, gentlemen, upon the theory that the paper signed by Mr. Henry and put upon the records was false and fictitious in the sense that it gave the defendant no right to the property. That Mr. Henry exceeded his authority in making it there can be no question, and in the way in which it stood when it was given to defendant he had no right to put it upon the record. The chief question for your consideration, therefore, is whether the

plaintiff by his conduct and by what he did when he came to know what had been done in his name ratified and confirmed this agreement. It seems that after he came here some negotiations took place between himself and the defendant; they had various interviews in respect to this property, and the plaintiff's theory in respect to it is that he was willing to make sale of the property to the defendant in the manner proposed in the paper which had been given by Mr. Henry, except that he wanted the money in hand at once and without waiting until the 24th of the month, as was provided in that agreement. The defendant's account of the matter is that there was nothing said about disaffirming the contract as made by Mr. Henry; that the plaintiff was quite willing to sell at the price named, and he was willing to pay at once as soon as title could be settled. Some differences arose between them concerning the receipt, which had been given by somebody by the name of Dubbs in the plaintiff's name, and a question as to how that ought to be removed and by whom; but finally, according to the defendant's account, he agreed to remove that himself and was willing to accept the title as it then was. This was about the 18th of the month, and he so informed the plaintiff. If the matter is as he states it, of course there ought to have been no further difficulty in relation to the matter, and if it stood in that way you may take this as an affirmance of the contract, which gave the defendant the right to have the property. It stands mainly as a question between these parties, as to which is right in respect to the negotiations which took place between them after the plaintiff arrived in Denver and up to the 23rd of the month. If the plaintiff is right in his account of it, and in all negotiations which he then had he was insisting upon immediate payment of this one-half and expecting it to come out in that way, and this was not done by the defendant, they were in effect proceeding upon some new negotiations with reference to the matter, and not upon the old understanding and agreement. If the defendant is right in what he has said about it, the matter of
130 the delay in time was unimportant; he was ready to complete the contract whenever the matter of the title should be adjusted—to accept the deed and pay the money at any time—and if that was the understanding and finally the plaintiff went off without completing the contract, of course that would affirm it in such sense that the defendant might insist upon it, and in that view his putting it upon the record was entirely regular and proper.

As to the question of damages, if you find that the matter is as the plaintiff states it to be, that he never affirmed this contract that was made by Henry, and that all that took place between himself and defendant was in the way of negotiations for a new contract between them by which immediate payment should be made, and that the paper was wrongly placed upon record for that reason, it is a question only of what damages you say shall be given for an act of that kind. There is no direct showing of damage, because the property, according to the testimony, was at the time the suit was brought worth more than the defendant was to pay for it, so that in respect to the value of the property the plaintiff lost nothing by

the delay, and it is only a question of what would be allowed by the jury for doing a thing of that kind, filing a paper which gave to the defendant no right and which he was not entitled to insist upon and which operated as a cloud upon the title of the plaintiff. I do not see that there can be any question of punitive damages if you accept the testimony in respect to the defendant's conduct in consulting with Mr. Benedict and following his advice in putting the paper upon record. If he did it in good faith, and believing that he had acquired a right to the property under it and by the advice of counsel, it would disprove any willful intent to injure the plaintiff, and as to that matter Mr. Benedict's testimony appears not to be contradicted, so that I do not see that there is any question of that kind for consideration. The question is mainly whether you will accept the plaintiff's account or the defendant's in respect to the negotiations which took place between them from the 12th to the 23rd of March, 1888. If you decide that the plaintiff's account is correct you can return such damages as he may be entitled to. If you agree with the defendant, your finding ought to be for him.

EXHIBIT 2. John W. Webster, Examiner.

EXH. D, PL'F.

Folio 199.

DENVER, COLO., *Mar.* 20, '88.

This agreement made this day between Wm. B. Hanscome and H. S. De Sollar is to read as follows:

Wm. B. Hanscome, agrees to give H. S. De Sollar a half interest in all money received over $5,000.00 five thousand dollars when lots No. (4) (5) & (6) block 36, Park Ave. addition to Denver are sold, after paying commission to agent selling.

131 Should H. S. De Sollar make the above sale, no commission shall be charged. In consideration of which H. S. De Sollar agrees to surrender a certain contract of sale made by Jno. J. Henry, acting as agent for Wm. B. Hanscome. It is understood that when the above contract is surrendered to J. J. Henry the e-rnest money given by H. S. De Sollar is to be refunded to H. S. De Sollar. If it is decided to remove a certain receipt of $25.00 now on record, given by a Mr. J. A. Dibs as agent for W. B. Hanscome to H. N. Chittenden which now appears as a cloud against the property above described—the expense of this removal shall be deducted from the gross receipts. Wm. B. Hanscome has the right to sell at any time he may see fit but it is distinctly understood that when the above-described property is sold the net amount over and above provided for shall be equally divided.

The only expense above provided for is to be the expense of making this sale should any occur.

EXHIBIT 3. John W. Webster.

Folio 199.

Whereas J. J. Henry, claiming to be authorized by Wm. B. Hanscom thereto, lately made and signed a receipt or memorandum of a sale of lots Nos. 4, 5, & 6, block 36, Park Avenue addition to Denver, to H. S. De Solar, and the authority of said Henry to make said agreement is denied by said Hanscome; and

Whereas the said Hanscome and said Solar are both desirous of amicably settling the difference between them, now, the said Hanscombe and Solar agree—

1. That said receipt and memorandum of said Henry shall be taken as of no effect.

2. That if said Solar shall within 90 days from this date find a purchaser for the said lots from said Hanscome at a price not less than $6,000, one-half cash and one-half in one year, with 8 per cent. interest, secured by trust deed on the said lots, the said Hanscome will convey the said premises to such purchaser by warranty deed, and will allow to said Solar as and for his commissions for finding such purchaser a sum equal to one-half of the amount of the purchase price in excess of $5,000 after deducting from such excess all expenses attending such sale.

In case purchaser shall be found upon terms above named by other agent than Solar and approved by said Solar, then the sum of $150 for such agent's commissions shall be deemed a part of the expenses of sale.

Proposed in place of agreement of 20th March. Prepared by Bentley.

132 EXHIBIT 4. John W. Webster, Examiner.

Letter.

W. B. Hanscome to J. J. Henry. } Filed for Record at 4.08 p. m., March 24th, 1888. Jos. H. Smith, Recorder.

WICHITA, KANS., *Feb. 3d*, 1888.

J. J. Henry, Esq., Denver, Colo.

DEAR SIR: Yours of the 30th is rec'd, and in reply will say that I am not particularly anxious to trade my unincumbered lots for encumbered improved property, but I will look into the matter and advise you if I do not make a trip to Denver soon, as I may conclude to do in a few weeks. Where is Ellsworth Str. & S. B.? How far from the Circle r'road depot?

The 3 lots on Clarkson St. I will not sell for less than $5,000 cash or its equivalent and pay the usual commission for selling. What is the partie's name that wants to trade the brick house?

Yours truly, W. B. HANSCOMBE.

Letter.

W. B. Hanscome to J. J. Henry. } Filed for Record at 4.10 p. m., March 24th, 1888. Jos. H. Smith, Recorder.

WICHITA, KANS., *Feb'y 7th*, 1888.

Judge J. J. Henry, Denver, Col.

DEAR SIR: Yours is rec'd. As I have before written you, the (3) lots on Clarkson St. I will not sell for less than $5,000 for the 3. I was offered $4,500 cash for those lots nett, no commission, 6 months ago, but declined. If the party wants them at the price I have named, part cash, balance reasonable time at 8 per ct. in'st, I will make a deed of the same.

Yours truly, W. B. HANSCOME.

133 *Letter.*

W. B. Hanscome to J. J. Henry. } Filed for Record at 4 p. m. March 24th, 1888. Jos. H. Smith, Recorder.

WICHITA, KANS., *Feb.* 29, 1888.

Jo-n J. Henry, Esq., Denver, Col.

DEAR SIR: Yours of the 25th is rec'd; am sor-y you have to work so hard to sell my lots on Clarkson St., for I am not so very anxious to close them out, even at the $5,000.00, the price I held them at some time since. If I make any change on them it will be to advance the price, as I had just about as soon hold them as to sell for $5,000, and I think the time is up that I offered to sell them for that sum. Friends have advised me not to sell them now, as property was advancing in that section. In no case should I sell them less than $5,000, and I should insist on having at least ½ cash and the balance in one and two years at the largest, interest at 8 per ct. & payable semi-annually, and I should prefer to make the time shorter. As I now expect to be in Denver on or before March 10th, perhaps we can then arrange about a sale, if not disposed of before; but, as I have before written, I am not at all anxious to sell at my first offer of $5,000 & half cash.

Yours truly, W. B. HANSCOME.

Contract of Sale.

John J. Henry, agent for W. B. Hanscome, to H. S. Dr Solar. } Filed for Record at 4.12 p. m. March 24th, 1888. Jos. H. Smith, Recorder.

DENVER, COLORADO, *March* 3, 1888.

Know all men by these presents that I, John J. Henry, acting as agent for Wm. B. Hanscome, of Wichita, Kansas, have agreed to sell to H. S. De Solar, of the city of Denver and State of Colorado,

the three lots owned by the said Wm. B. Hanscome, situated on Clarkson Str., between 16th and 15th avenues—15th avenue is known as Colfax avenue; — block, number- of lots not known, but they are believed to begin the 4th lot from the corner of 16th street and are on the west side of Clarkson Str., fronting east. The lots are each 25 ft. on Clarkson St., running back to an alley, and
134 are 145 ft. in depth. Said De Solar is to pay five thousand dollars, $5,000, for the lots above described, payments as follows, to wit: Two hundred dollars, $200, in cash this day, the receipt whereof is hereby acknowledged, and twenty-three hundred dollars, $2,300, on or before the evening of the 24th day of the present month of March; the remaining sum of the purchase-money, $2,500, one-half, or $1,250, *are* to be due and payable on or before one year from the date of deed, and the other half, $1,250, in two years, on or before, from date of deed, each sum bearing interest at the rate of eight, 8, per cent. per annum, interest payable semi-annually; payment on these deferred amounts to be secured by notes and deed of trust on the property now bargained for.

It is understood that a good, sufficient, and satisfactory deed is to be made by the said Wm. B. Hanscome for the said described property on or before the 24th day of the present month of March, at which time the papers are all to be dated and executed. It is also further understood that the property conveyed is to be clean and clear of all incumbrance.

And it is further understood that if the said H. S. De Solar is or should be in default in meeting the second payment herein provided for, then the $200 paid this day shall be forfeited.

JNO. J. HENRY.
H. S. DE SOLLAR.

STATE OF COLORADO, }
County of Arapahoe, } *ss.*:

I, Joseph H. Smith, county clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true, correct, and complete transcript and copy from the records of my office, as the same appears in Book 382, at pages 137 and 138.

Witness my hand and official seal this sixteenth day of August, A. D. 1888.

[SEAL.[

JOS. H. SMITH,
County Clerk and Recorder,
By WM. R. PRINN, *Deputy.*

Ex. 4. Copy of the record.

135 EXHIBIT 5. John W. Webster, Examiner.

Folio 240.

DENVER, COLO., *Mar.* 20, '88.

This agreement made this day between W. B. Hanscome and H. S. De Sollar, is to read as follows:

Wm. B. Hanscome, agrees to give H. S. De Sollar, a half interest in all money received over $5,000.00 five thousand dollars when lots No. (4) (5.) & (6.) block 36, Park Ave. addition to Denver are sold: after paying commission to agent selling. Should H. S. De Sollar make the above sale, no commission shall be charged. In consideration of which H. S. De Sollar agrees to surrender a certain contract of sale made by Jno. J. Henry, acting as agent for Wm. B. Hanscome. If it is decided to remove a certain receipt of $25.00 now on record, given by a Mr. J. A. Dubs as agent for W. B. Hanscome, to H. N. Chittenden, which now appears as a cloud against the property above described, the expense of this removal shall be deducted from the gross receipts. It is understood that when the above contract is surrendered to Mr. J. J. Henry the e-rnest money, given by H. S. De Sollar is to be refunded to H. S. De Sollar. Wm. B. Hanscome has the right to sell at any time he may see fit; but it is distinctly understood, that when the above-described property is sold, the net amount over and above provided for, shall be equally divided. The only expense above provided for is to be the expense of making this sale should any occur.

In the Circuit Court of the United States.

HANSCOME *vs.* DE SOLLARS. } No. 2361.

Plaintiff, Mr. HANSCOME, sworn.

Direct examination by Mr. BENTLEY:

Q. You are the plaintiff in this suit?
A. Yes, sir.
Q. Do you know Mr. De Sollars, the plaintiff?
A. Yes, sir.
Q. Do you know Mr. John J. Henry, whose name has been mentioned here?
A. Yes, sir.
Q. When and where did you first learn of this contract, which is matter of controversy in this suit, made between Henry and De Sollars?
A. At Judge Henry's office on March 12th, 1888.
Q. How did you go to Mr. Henry's office?
A. I received a letter from Mr. Henry.
Q. Where did you receive that letter?
A. At the St. James hotel.
Q. Look at that paper and see if that is the letter you received.
A. Yes, sir. I think it is.
Q. From Mr. Henry?
A. Yes sir.
Q. Where did you receive that letter?
A. At the St. James hotel; I was stopping there.
136 Q. When did you receive it?

A. On the morning of March 12th.
Q. When had you left Wichita?
A. I left on the 10th.
Q. To come here?
A. Yes, sir.
Q. Look at those papers. (Handed papers.) I ask you whether the papers which you are examining are the abstracts which you afterwards handed Mr. De Sollar.
A. I should say they were.
Q. That is, after you got this letter?
A. Yes, sir.

Exhibits marked A, B, and C, plaintiff.

Mr. BENTLEY: I propose to read this letter (Exhibit A).

Mr. PHELPS: Have you read the envelope in which this was sent?

Mr. BENTLEY: It was mailed from here to Wichita; from Wichita followed Mr. Hanscome back. It is possible I have got the envelope; I suppose I may have it somewhere among my papers.

"DENVER, COLORADO, *March 6th.*

William B. Hanscome, Wichita, Kansas.

DEAR SIR: I have at last sold your three lots on Clarkson street, this city, to H. S. De Sollar for $5,000, but to do it had to sacrifice part of my commission. I have made the sale in exact accordance with your advices, namely, $2,500 to be paid on or before 24 March, '88, and $1,250 to be paid on or before 24 March, '89, and $1,250 to be paid on or before 24 March, 1890, with eight per cent. per annum interest, notes for deferred payments to be secured, of course, by deed of trust on the property sold. The buyer, De Sollar, is quite a large property-holder here, and is altogether responsible. I think, and so do other real-estate men here, that this is the best sale made this winter. I enclose herein a draft for fifty dollars from the Colorado National bank, payable to your order, on Kountze Brothers, New York. This is for earnest money. Please acknowledge receipt of same. You wrote me you expected to be in Denver about the 10th of the present month. Can you not postpone your visit till about the 20th or 24th, so that this matter may be closed while you are here? In the meantime you might send your abstract to me — to some friend in order that no time may be lost in having it brought down.

Most respectfully,

(Signed) JOHN J. HENRY,
Post-office Box 1886.

Q. Did you receive anything with that letter?
A. I did; a draft for fifty dollars was enclosed.
Q. Referred to in that letter?
A. Yes, sir.
Q. Upon the reading of that letter what did you do?
A. I called on Judge Henry at his office, 17th and Curtis.

Q. Did he show you this contract he had made with Mr. De Sollar?

A. He did.

Q. That is a copy of it?

A. Yes, sir.

Q. Have you the copy which he showed you?

A. I have. I have had it; I left it with you.

Q. The copy which he showed you?

A. No, sir; no, sir.

Q. What you made from that?

A. He let me have it one day to show you, and I made a copy.

Q. After seeing Judge Henry what did you do then?

A. I inquired, of course, where Mr. De Sollar was. I told him that was not a —; I should not ratify it.

Objected to.

Q. I didn't ask what you told.

Q. Did you go to Mr. De Sollar?

A. Yes, sir. He told me where I would find him. I called on him.

Q. What time of day?

A. I think about noon.

137 Q. Now, then, state what conversation occurred between you and De Sollar at that time.

A. I called at his room, Opera-house block; he came out. I introduced myself as being Mr. Hanscome from Wichita; I told — I was the Mr. Hanscome from Wichita with whom Judge Henry and he had been negotiating about some lots on Clarkson street; I was the owner of those lots; I had seen the agreement that Judge Henry and he had made; I came to tell him I repudiated that agreement; that was not carrying out my instructions; I had not — that was not a sale, because I told him distinctly if he sold for half cash he could make the sale, make the sale the third day of I March, to take — March 24th; I told him that was the cash —; he suggested he had paid the money on it, or something. I told him I had received fifty dollars. He wanted to know if that was all. I told him it was; I was ready to pay that back.

Q. Go on; if there was any further conversation, state the whole conversation through.

A. That was the sum and substance of it; and, furthermore, I said that I would wait until the 24th of March; I should not be here at that time; I had left my business and had got to go back; I didn't care about making the sale; that the property was worth more to me than that; that I could sell it for six thousand dollars, the lots; had so been told since I arrived in Denver.

(Q. You are telling what you told Mr. De Sollars?)

A. This conversation at the first interview. He said he thought he had got a good trade himself; he thought they were worth six thousand dollars to him; and as I told Judge Henry before—perhaps I am not to say what I told Judge Henry.

A. No; not except what you told to De Sollars.

A. My principal object in calling on him so soon was to notify him I would not sanction that sale.

Q. If there was anything further said in the conversation, state it fully, so we will get through with it.

A. I think it was said something about I would consider the matter for a day or two, provided he would raise me the money in two or three days; I would take it into consideration. I would not ratify Judge Henry's agreement, because I ignored that entirely; he had not followed out my instructions and I would have nothing to do with it. If he could raise me the money in two or three days at the longest, I would take it under consideration whether or not I would deed him the property; I would not agree to convey it, but would see him later. It was left that way. He said he didn't know he could get it before the 24th. That was the purport of my interview.

Q. Did you see him afterwards?

A. I did.

Q. When next?

A. The next day.

Q. State where you saw him and what conversation occurred between you and him then.

A. Well, I called in the office to see if he was likely to talk this matter over.

Q. At his office?

A. At his office; talked this matter over to see if he was likely to get the money. In the meantime, before that, I had been talking about making a trade for some property here, where I would have to have some money, and would require several thousand dollars, if I made the trade in cash, and the parties, real-estate dealers, gave me an option on the property for a day or two.

Q. Did you inform him of this?

A. Yes, sir; that I would lose money—lose a thousand dollars—
by letting go this property, but I would waive that, as
138 I thought he and Judge Henry acted in good faith; I wanted to protect Judge Henry in the matter. I thought it was all square and right on his part. I could make as much out of this purchase. I was to get money; if I got this $2,500 where—that I required five thousand dollars; knew where I could get $2,500 besides; would make this trade; could hold it a day or two; it was a good bargain—a grand bargain. I was in hopes then he would get the money for me, and I would consummate this other trade.

Q. What did he say about it?

A. He said he didn't know as he could get the money; could raise the money. He said, By the way, you have not shown me the abstract—"I have not seen the abstract;" something to that effect. I told him the abstract was made out and brought down when I bought the property; there had been no transactions, no transfers, since, and it would not be much of a job and I would have them brought down. I was to get the abstracts and hand them (to him).

Q. When did you see him next?

A. This was on the 15th. I am sure on the 15th of March.

Q. You saw him next on the 15th of March?
A. Yes, sir.
Q. What transpired then?
A. I handed him these abstracts I have identified here.
Q. State the conversation that occurred, if anything.
A. Well, of course, this matter—I was quite anxious to know whether I was going to get my money, this $2,500 cash; whether the trade was going through. I have always said in every interview why I did this was on account of this other trade I could make. I never acknowledged Judge Henry carried out my instructions in the matter.
Q. What I want is the conversation between you and De Sollar at the time when you gave him the abstract?
A. Something was said about the money.
Q. What was that?
A. He said he didn't know whether he would be able to raise it or not, and I told him—I told him before, whether I said it now or not—that was not cash payable on the 24th; I should not wait until the 24th; I had a chance to make a trade if I got the money.
Q. Is that what you stated to him on the 15th?
A. Well, yes; I may get some of these conversations mixed up; I don't intend to.
Q. Try not to do that. Give the statement of the conversation on the 15th.
A. I know I handed him the abstracts; that was about the abstracts.
Q. You gave him the abstracts?
A. Yes, sir; he said he would take them to his attorney to examine.
Q. Now, what further occurred between you at that time?
A. I think that I don't remember anything of importance.
Q. Did you arrange to have a further meeting?
A. Yes, sir; we did.
Q. State what the arrangement was—what arrangement you made with De Sollar as to the next meeting.
A. Well, we would meet at Judge Henry's office.
Q. When?
A. At that time.
Q. At what time?
A. I think about noon or a little after noon—one o'clock. I would not swear positive. My recollection is somewhere about that.
Q. Did you and he meet at Judge Henry's office in accordance with it?
A. We did.
Q. State what transpired there.
139 A. He said his attorney—I think it was Mr. Malone he showed the abstract to. He said the abstract was all right except there was a cloud on the title. That was a receipt on there for twenty-five dollars filed by Mr. Dubbs, of Chittenden—H. M. Chittenden.
Q. Does it appear on those abstracts?

A. Yes, sir; he said that was a cloud to the title.

Q. State all the conversation that occurred between him and you at that time.

A. I explained—undertook to explain to him and Judge Henry about how that came on there.

Q. State the explanation.

A. I stated I had forgotten all about it. I did not treat it as of any account at all. It was a blackmailing scheme; tried to extort money from me, which I would not submit to, and it did not amount to anything, anyhow. Furthermore, I went on and told them my attorney told me not to have anything to do with it. In the first place they offered to remove it for a hundred dollars after they had put it on.

Q. Who did that?

A. Chittenden & Dubbs.

Q. Did you explain that to De Sollar?

A. I did at that time. I told him more fully; you could explain Mr. Bentley was more familiar with the matter and he could explain about that receipt that he advised. Mr. Bentley advised me to have nothing to do with them about it; that when it became necessary to have that removed from the title he could get an order of court at a very small expense. It would be cheaper for me to have it removed that way than it was to have anything to do with these men, and I left it that way. I told him about the nature of this $25 receipt that Mr. J. M. Dubbs gave Chittenden for twenty-five dollars *when* these same lots on Clarkson street, agreeing to deed them to him for $1,500, the three lots. I found out about it at the time and repudiated it right there and then, but they went and filed that receipt so as to extort some money out of me.

Q. What further occurred at that meeting, if anything? Where did you go then?

A. My impression is I went up to your office to see you and to let him explain, but I think I told him that I was perfectly responsible, and if I agreed to give my warranty deed and did give it it was perfectly good.

Q. In that interview?

A. In that interview—that I was responsible, and Judge Henry told him the same thing at the same time there. I know I had an interview with him at your office, bnt I can't swear positively. I think I did then at that time.

Q. Let us have this thing in order. Where did you go from Judge Henry's office?

A. Went over to Mr. Malone's office with Mr. De Sollar.

Q. What transpired there?

A. They were talking about this cloud on the title—the abstract.

Q. State what was said, who was present.

A. Mr. Malone was not there; at least I don't know Mr. Malone; they said so; they said he was not. Either his partner or a student was there and some other man.

Q. Another gentleman, at all events?

A. Yes, sir; another gentleman. I don't know them.

Q. State what transpired there.

A. They said about the abstract it was all right except the cloud might cause some trouble; that cloud, the $25 receipt—that cloud ought to be removed. I went through the same things I had stated in Judge Henry's office in relation to it and how that thing came on there—that is, the history of the Dubbs receipt; reiterated the same thing.

140 Q. Is that all that transpired there?

A. That is all. There might have been someting more said; probably was; had quite a long controversy. He wanted me to get that removed. I told him I should not; I never should speak to them about it; should take my own course. He said he did not want to take it with that on there. Said I, We will let the trade go by. I will throw it up. I am not afraid at all. The property is worth as much to me. If you have any fears about it, so it won't cause you any trouble or annoyance, we will let it go by; call it off, or words to that effect. No; he pressed to have the trade go through. Something was said about a thousand dollars; it was worth a thousand dollars to him. That was afterwards. That was said in his office—in Mr. De Sollar's office.

Q. Where did you go from Malone & Steele's office?

A. To De Sollar's office.

Q. What transpired there?

A. We talked this matter over *pro* and *con*. I was trying to see to know whether he was going to take this property. I was trying to convince him I was perfectly good; if he thought there was any trouble my warranty deed would make it good.

Q. The conversation was in that line?

A. In that line; and he said he would not take it with that cloud on and it would have to be removed, and he would make me remove it; began to get a little warm talking after that.

Q. Did he at that time or not insist upon his paper which had been signed by Judge Henry?

Objected to that — is not proper — ask what was said.

A. No, sir; he did not.

Q. State fully what was said touching the question of his compelling you to remove that claim.

A. Well, he said in some words to that effect he should make me do it, and he should employ the best attorneys there was in Denver; he would make me trouble; began to get riled without any cause, as I thought.

Q. What did you say to him?

A. Well, he threatened something about he would cloud the property up more; if it was not fixed he would put more clouds on it; something to that effect. I told him if he did I should hold him responsible. I understood he was responsible.

Q. Was that in that conversation?

A. Yes, sir.

Q. Where did you meet him next?

A. The next I think I met him on his office on the 20th of March.

Q. You think you met him at his office on the 20th of March?

A. Yes; I think that was the time.

Q. What transpired then?

A. Why, I came to meet him there. Judge Henry told me that he wanted——

Q. State what transpired.

A. Well, perhaps I would want to explain why I went to his office.

Q. No; state what transpired.

A. He said he was sorry—he was very pleasant—sorry we had any trouble; that this matter might be arranged amicably, etc., between us. So we sat down and privately talked over this matter.

Q. State what was said.

A. One thing he said he was going into the real-estate business and he could handle these lots and he could make it for our mutual interest for me to let him have the sale of these lots. The trade had been declared off at that time. He said—he talked of going into the real-estate business, and he could sell them for six
141 thousand dollars or more, and if I would agree to it we would divide what was got—between five and six thousand dollars—between us or all over five thousand dollars.

Q. Would be divided between you?

A. The profits between us. If he sold them himself there would be no commission, but if other real-estate agents sold them $150 would come out. We would allow them $150 for selling. Says he, Those are very valuable lots; there is no doubt but what I can get a good price for them. There was nothing said about Henry's selling or having anything to do with them at that time.

Q. Did you come to an understanding at that time?

A. Yes, sir; we talked it over. Everything was very pleasant. We had it arranged. I told him, or we both suggested, I guess, we better put it into a written agreement. I suggested he was pretty quick with the pen—he could do it as well as anybody else—so he sat down to write what we had talked over, but he got it down——

Q. Did he write down anything?

A. He did; yes, sir.

Q. At that time?

A. Yes, sir.

Q. Look at that paper, please, and state whether that is the paper he wrote at that time.

A. Yes, sir; it is.

Mr. Bentley hands the paper spoken of by the witness to Mr. Phelps and says, "I want you to see what it is; see if you object to it."

No objection, and the paper was marked Exhibit D.

Mr. Bentley reads paper, as follows:

"DENVER, COLO., *May 20th*, 1888.

"This agreement, made this day between William B. Hanscomb and H. S. De Sollar, is to read as follows: William B. Hanscomb agrees to give H. S. De Sollar a half interest in all money received over five thousand dollars ($5,000) when lots numbered four, five, and six, in block thirty-six, Park Avenue addition to Denver, are sold, after paying commission to the agent selling. Should S. H. De Sollar make the above sale no commission shall be charged; in consideration of which H. S. De Sollar agrees to surrender a certain contract of sale made by John J. Henry, acting as agent for William B. Hanscomb. It is understood when the above contract is surrendered to J. J. Henry the earnest money given by De Sollar is to be refunded to H. S. De Sollar if it is decided to remove a certain receipt of twenty-five dollars, now on record, given by Mr. J. A. Dubbs, as agent for W. B. Hanscomb, to W. B. Chittenden, which now appears as a cloud on above property. The expense of this removal shall be deducted from the gross receipts. William B. Hanscomb has the right to sell at any time he may see fit, but it is distinctly understood that when the above-described property is sold the net amount of profit shall be equally divided. The only expense above provided for is to (there is a word)—is the expense of making this sale."

Q. After the writing of that paper, then what was done?

A. We both signed it, signed it there and then. Mr. De Sollar kept it, said he wanted to show it to his attorney, and we left; but before, in the conversation, Mr. De Sollar made the remark that I had—that I would have lost money if this Henry contract had been carried out, and by its not being carried out he had lost money, but we would make it up.

Q. In this manner?

A. In this transaction.

Q. He kept that paper after you had signed it to show to his attorney?

A. Yes, sir.

Q. How did you come by it afterwards?

142 A. We left; the next morning I went in; I told him I wanted that paper, I wanted to show it to my attorney, and he said—he refused to let me have it—and he said he would keep it (or copy it) and let me have it some time. Well, I told him that I would wait and take it along; he could copy it. Then, I say, he was not willing to let me have the paper.

Q. Go on and tell what was done.

A. So I waited and he afterwards copied this paper, and then he handed me the copy.

Q. Did not give you this paper?

A. No; I told him that was not what I wanted. I wanted the original paper we signed and would return it. I didn't think it looked well—his keeping it. He then took and erased his name off of that paper and gave it to me and tore the other.

Q. Tore up the copy?

A. No; he did not. I am too fast.

Q. Erased his name and gave you the original and you have kept it since?

A. Yes, sir. He tore the copy up afterwards. I am a little too fast.

Q. The erasures at the bottom of the original were his name and your name underneath it?

A. Yes, sir.

Q. What further was ever done relative to that paper between you and him?

A. He let me have that paper and I took it up and showed it to you and told you in the meantime——

Q. Gave me an account of this matter?

A. The account of what we agreed to do, etc.—how we were going to arrange the matter.

Q. Did you go back to him with that paper?

A. I did.

Q. What occurred there?

A. I handed him the memorandum—the paper you drew up after I stated the matter to you.

Q. After you stated the arrangement?

A. Yes; after I stated to you the talk or agreement verbally which I supposed he put on that paper.

Q. You took that paper back—the memorandum you prepared?

A. Yes, sir.

Q. What happened?

A. He got mad right after he looked at that and would not have anything to do with it; then tore up the other paper—the copy he had made. That was on the 21st, I think, of March.

Q. When did you next have a meeting with him?

A. On the 23rd of March.

Q. Did you see him again on the 21st after you took back that paper?

A. I don't remember that I did.

Q. Did you see him the evening of the 21st?

A. Yes, sir; saw him the evening of the 21st. This was on the 21st, in the afternoon. I may get the dates mixed a little; that is all. I get the main thing correct.

Q. State when it was when you next saw him after this paper was torn up—this copy—what transpired.

A. I think I went to his office.

Q. When?

A. On the 21st—on the evening of the 21st. I think that was the next time I saw him.

Q. Anybody with him?

A. Yes, sir.

Q. Who?

A. Mr. Herbert—Mr. Fred. W. Herbert.

Q. What time in the evening?

A. Perhaps 7.30.

Q. Did you see Mr. De Sollar there?

A. I did.

Q. What transpired?

A. I knocked at the door and he came out into the hall—toward the hallway—and closed the door. I introduced him to Mr. Herbert and told him I called to let him have the deed of
143 that property, if he would accept, on Clarkson street—the property we had been talking about. I wanted to get ready to go away—to leave town—and I would give him the deed—a warranty deed—if he was willing to take it, and he declined.

Q. What did he say?

A. He refused. He said he would not take it unless that matter was cleared off—that receipt business—and I told him that I should not take it off. Well, he said he should make me take it off, or words to that effect, and I told him I should take my own time when I removed it. I called for the last time to tender him a deed. *Id* he didn't want to take it, all well and good; I never should offer it to him again, and about the same time I took out fifty dollars in gold—that is, after he refused to accept on that condition.

Q. Then what did you do?

A. I took fifty dollars in gold out of my pocket—my right hand—and said, Here is fifty dollars which I presume belongs to you. I received fifty dollars from Judge Henry, and I make you a tender of this fifty dollars. He refused to accept it.

Q. What did he say?

A. "What kind of a fellow do you take me for, anyhow?" says he, "I paid more than that." I don't remember whether he said he paid two hundred dollars or not, but my impression is he paid two hundred dollars. I told him I only had fifty, and that is all I proposed to give back; he could look to Mr. Henry for the balance. He went on to say, "What kind of a fellow do you take me for?" He seemed very —. Says he, "Is that the way they do things in Wichita?" I made reply, "That is the way we do them here in Denver;" some words to that effect. He talked pretty harsh. I told him I had spent all the time in this matter that I should, and he said that he would make it warm for me if this matter was not fixed; something that way. I made this remark: "I have offered you the deed the last time. I have been fooling around here for nothing, just for this matter with you, and I don't propose to fool any more time with it." He says, "I will make it cost you a good deal of money if you don't." Says he, "I will file these papers on the record; I will have a cloud that you or your heirs can't remove; I will fix it so you can't sell." Says I, "If you do, you know the consequences. Judge Bentley advised you of the consequences, and I have, of this matter; that if you did that you would do it knowingly; you were a responsible man; I should hold you responsible; make you pay the damages; I would give you fair warning, right then and there," was the sum and substance of the talk.

Q. Then where did you go?

A. I left and went to my hotel. This was on the evening of the 21st.

Q. Did you see him again?

A. I did.
Q. Where?
A. On the 23rd.
Q. Where did you see him then?
A. At the St. James hotel he came up to my room. I heard a knock at the door. Mr. De Sollar and another gentleman entered. I was not the most—I was not in a very presentable appearance at the time; was completely taken aback that men should rush into my room without being announced.
Q. State what occurred.
A. He said he came in for the abstract. He introduced me to the gentleman with him. I think Mr. Thompson; I think that was the name. Well, I was a little taken aback, as I was invited to take dinner.
Q. Tell what transpired—the conversation.
A. He said he came in after that abstract and deed to the property. I told him I hadn't —, as I told him the night before; I should have nothing to do with that matter. If he wanted any abstract he would have to go to my attorney, Mr. Bentley. I left all the papers with him, and weren't going to bother myself any more with the matter. I told him the last time I saw him—the evening of the 21st—I should have nothing more to do with the matter; I was disgusted; he could not have the deed to the property, anyhow. He then said he was willing to take the deed. I told him it was too late; the property was not for sale.

144

Q. Did further conversation occur at that time? If so, what?
A. I think not; he went away.
Q. Did you see him again about this matter?
A. No, sir.
Q. You didn't see him after that?
A. No, sir.
Q. How long did you remain in Denver?
A. I left the next day at noon-time, at noon, for Wichita.
Q. Do you remember meeting me in my office during this matter at any time? If so, when was that?
A. I could not state positively, but I think it was after I got the abstract, after I handed him the abstract.
Q. Was it before this arrangement of the 20th?
A. Yes, sir.
Q. It was between the time you gave me the abstract and that?
A. Yes, sir.
Q. Can you state what transpired there at that time; what conversation occurred between you and him then, and me; how he came to come there?
A. I was anxious to get this matter fixed up. We had had a good deal of controversy about it. I wanted to go. I had him—wanted him to go up and see you and talk about my responsibility and my deed; if he would accept my warranty deed, whether it would be good or not, and, speaking about this receipt, I had told him how you could tell him the same thing.
Q. What transpired in that conversation in my office?

A. He said something about how he could cloud or should cloud the title to these lots, and you told him if he did he would lay himself liable; that I could recover damages; it would be malicious, knowing the transaction, and you advised him not to do anything of the kind, and you told him also his attorneys would advise him the same thing.

Q. Was anything said about this Dubbs receipt? Tell the whole conversation.

A. Yes; you told him that did not amount to a straw; it was of no account at all; it was a blackmailing scheme, and you advised me not to have anything to do with it, and I had been following your advice in the matter.

Q. Now, you went home to Wichita?

A. Yes, sir.

Q. After you went home to Wichita did you have any arrangement or make any negotiations for the sale of this property; and, if so, with whom and when?

A. I did.

Q. With whom?

Mr. Phelps objects to any testimony on that line on the ground that the complaint does not allege any special sales or special attempts to sell, so that the testimony is not justified at all on any of the authorities.

The COURT: You can't rely upon that after you have answered. That is an objection to be made by demurrer.

Objection overruled.

Q. With whom?

A. A Mr. Farncome.

Q. State what transaction.

A. I sold on the 6th of March, after I returned from Wichita; he lived in Wichita; I sold him those lots on Clarkson street.

Mr. PHELPS: I object to his stating what was done between himself and Mr. Farncomb down at Wichita; we were not present; had no knowledge of it.

145

The COURT: He can show sales he made; that is in the way of proving damages.

WITNESS: Can I show the deed I made?

Q. State what occurred.

A. Mr. Farncomb and I had been having a talk for some time previously.

Q. When you got back what transpired about these lots?

A. I told him I had some lots on Clarkson I would make—I wanted to sell to him; he wanted to get some property in Denver; I would make an exchange for some lots he had at Greensburg, in Kansas. I sold him those lots for $6,500.

Q. What was the consideration?

A. He gave me a check for $1,500—his check for $1,500—and four notes for $750 each, payable six, twelve, eighteen, and twenty-four months, drawing eight per cent. interest, that were to be se-

cured by a trust deed and lots in Greensburg, Kansas, valued at $2,000 ($12,000?). They stated the consideration $6,500.

Q. Did you make him a deed of these lots here?

A. Yes, sir.

Q. State what, if anything, was to be done with that deed and these papers which were to be given to you.

A. I told him to send that deed to you—to Mr. Bentley—to have recorded and to see that the title was all right to those lots, and, if the title was, to have them recorded, and if not why, of course, we would hear the trade would not go through; I would hold the check and notes till we heard.

Q. Did you continue to hold the check and the notes?

A. Yes, sir.

Q. When did you next hear about this matter?

A. Next, when we got the reply from you.

Q. I say when did you next hear about it?

A. I have forgotten; about a few days after; within a few days.

Q. How did you hear?

A. He had a letter from you.

Q. Have you got that letter?

A. Yes, sir; I have; Mr. Farnham also had a letter from you.

Q. Have you got the letter I addressed to Mr. Farnham?

A. Yes, sir.

Q. Produce them both.

A. There is Mr. Farnham's.

Q. You may state what are the dates of those letters.

A. March 28th, 1888. The letter to you is of the same date, March 28th, 1888.

Objected to; if there is any part of the letters proper they should introduce the letters; if the letters can't go in as a whole there is no reason why the witness should state orally any part of the letters.

Mr. BENTLEY: I don't insist upon them; I only thought it was a proper thing to identify the letters.

Q. After these letters came from me, then what transpired between you and Mr. Farnham in relation to this transaction?

A. Well, Farnham refused to take the property.

(And of course I didn't want him to if he was going to have any trouble in the matter.)

Mr. PHELPS: I ask to exclude that last remark.

The COURT: Yes; that is not proper.

Q. I ask you upon what ground Mr. Farnham refused to take the property.

Objected to because hearsay, immaterial, irrelevant; hearsay entirely.

146 A. On getting a letter from you on the ground that the title was——

Objected —; that he cannot state what is in the letter.

The COURT: No; he cannot state that. He cannot state that Mr. Farnham said anything.

A. Mr. Farnham refused to take the property when there was so much against it.

Q. What was against it? What did he say was against it? Does your honor hold we are bound by what Mr. Farnham said to this man off there in Kansas respecting his reasons, based on some information gotten from Mr. Bentley, an attorney? If that is the rule of law a man can go to work and set up almost any sort of a transaction beyond our power to reach or test by any rule of evidence. He goes to this man in Kansas and gets a letter from his lawyer, loose talk, and then, on the strength of that which his lawyer says, says he is damaged by reason of it. It seems to me most remarkable. * * *

The COURT: I think it is competent. You can ask for it.

Objection overruled.

A. On the ground that the title was not clear; that there was—I suggested to him to write to Mr. Bentley. Mr. Bentley had the abstracts.

Q. That is not it. You state the ground which Mr. Farnham gave for not carrying out that agreement. That is all that is asked for.

A. On account of these documents being on the record.

Q. What documents?

A. Those letters to Henry. There was letters written to Judge Henry and an agreement with Henry and De Sollars.

Q. That is a matter in this controversy?

A. In this controversy.

Q. Was that agreement after Mr. Farnham refused to carry it out? Have you and Mr. Farnham ever carried it out?

A. No, sir; I have not.

Q. It has never been consummated?

A. No, sir.

Q. Have you since that time made any efforts to make a sale of that property?

A. I have.

Q. With whom?

A. With Mr. Merritt, of Merritt & Grommon.

Q. Do you remember what his initials are?

A. E. W. Merritt, I think, a real-estate dealer on Arapahoe, a partner of Grommon. That was in December last.

Q. State what transpired between you and him relative to it.

Mr. PHELPS: Was that subsequent to the commencement of this suit?

Mr. BENTLEY: I guess not.

Mr. PHELPS: This suit was set down for trial in December.

Mr. SEAMAN: The complaint appears to be filed on the 6th of December.

Q. State when you met this—had this interview or this negotiation, whatever it may have been.

A. Somewheres in the fore part of December. I don't remember the date.

Q. Do you know whether it was before this suit was commenced?

A. I don't remember. I don't know.

Q. But it was the fore part of December?

A. Yes, sir; early in December.

147 Q. Can you state whether it was before the sixth?

A. I think so; I think it was the first week in December.

Q. You think it was before the sixth?

A. I think it was; I would not be positive, because I might be mistaken.

Mr. BENTLEY: In that view I will ask the question: State what transpired between you and Mr. Merritt at that time.

Objected to because immaterial and irrelevant; that it devolves upon the plaintiff here to show before going into it, etc. * * *

Mr. BENTLEY: If the court will permit me to recall Mr. Hanscome until he has heard Mr. Merritt's statements we will pass that question; let it go to that time.

Q. I want to go back to a single thing. You say that on the evening of the 21st of March you and Mr. Herbert went to Mr. De Sollars' room and had a conversation there and tendered some money, and you spoke about a door being closed. I want you to describe the situation of that hall as to the entrance to Mr. De Sollars' room and with reference to the conversation that took place.

A. Well, there is a hall north of Mr. De Sollars' room—a hall about ten feet in length, I should think, perhaps; nine or ten feet, perhaps, or ten feet; perhaps three feet wide. There is a door out of Mr. De Sollars' room into the hall; then there is another door outside into the hall. There is two doors.

Q. Was this conversation between you and De Sollars on the outside—outside of the door?

A. Outside of the door, and that door was closed; Mr. De Sollars closed it.

Cross-examination of Mr. HANSCOME by Mr. PHELPS:

Q. How much time have you spent in Colorado the last four or five years?

A. I could not tell you. Have been here but once or twice during that time—perhaps two or three times.

Q. Once or twice in four or five years?

A. It is only a little over two years since I went away; about three years?

Q. You used to live here?

A. Yes, sir.

Q. You are now living in Wichita?

A. Yes, sir.

Q. How long does it take to come from Wichita here?

A. Well, about twenty-four hours; a little less; it depends how the trains run.
Q. How much less?
A. Well, from twenty to twenty-four hours.
Q. What day of the week did you leave Wichita?
A. I left on Saturday.
Q. Saturday?
A. Yes, sir.
Q. You got here Sunday?
A. Yes, sir.
Q. Sunday was the 12th?
A. Sunday was the 11th, I think.
Q. You left home on Saturday. What day of the month was it?
A. I left home on Saturday, the tenth.
Q. What time in the day?
A. In the afternoon.
Q. Got here what time on Sunday?
A. I got here about noon Sunday.
Q. What time in the afternoon was it when you left there?
A. Well, I can't tell; the trains vary sometimes. I could tell you what time I left the last time I came up, but I don't remember.

Q. I ask about this time in March, 1888. You don't know
148 what time in the afternoon?

A. Somewheres between four and five o'clock in the afternoon, I judge.
Q. Had you received any mail that day before you left?
A. Presume I had. I received mail every day.
Q. Are you in the habit of getting your mail every day from the post office?
A. Yes, sir.
Q. You suppose you got it that day?
A. Yes, sir. The mail service has been very irregular down there in the most of the last year; it is better now.
Q. You will be kind enough to answer my questions. After you got here you went immediately to the St. James hotel from the depot, did you?
A. Yes, sir.
Q. How long had you been here before you got this letter?
A. I think I got it the next morning.
Q. What time in the morning?
A. Probably when I came down from my room.
Q. What time was that?
A. Between seven and eight o'clock, probably.
Q. In the morning?
A. Yes, sir.
Q. What time was it when you got over to Judge Henry's office?
A. Probably nine o'clock—nine or ten.
Q. How long were you there?
A. It might have been an hour or an hour and a half.
Q. I asked you how long you were there.

A. I could not tell; probably there a half an hour.

Q. You think you were there half an hour; is that what you mean?

A. Yes, sir, or more.

Q. You went there direct from Mr. De Sollars'?

A. Yes, sir; perhaps stayed there more than half an hour; might have gone out.

Q. You state you hardly think you went from Henry's to De Sollars' direct?

A. I am not positive about that.

Q. I want to know what the fact *it*. Did you go to De Sollars' office directly from Judge Henry's?

A. I think I did, but I am not positive. I might have gone out in some other real-estate office.

Q. You don't know what you did do?

A. I could not tell you.

Q. Are you sure you went there the same forenoon?

A. Yes, sir. I tell you why——

Q. Never mind about the why. You found Mr. De Sollar there?

A. Yes, sir.

Q. You had a talk with him?

A. I did.

Q. What was the first thing you said to him?

A. I said I introduced myself as being Mr. Hanscome, from Wichita, and he was very glad to see me.

Q. He said he was glad to see you?

A. Appeared, apparently.

Q. Did he say so?

A. I don't know as he did.

Q. Shook hands, did he?

A. Yes, sir.

Q. What was the next thing you said to him?

A. I told him I called to see him about that trade, the trade he had been arranging, he and Judge Henry had been talking; I was the man — owned those lots, and that I did not sanction the agreement that Judge Henry had made.

Q. That was the first thing you told him?

A. That was in the course of the conversation; I think that was about the first; it might not have been the very first words; the interview was not very long.

Q. What did he say in response to that?

149 A. Well, he said I had received money on it; said I had received money; I think it was what he said in response.

Q. Then what did you say?

A. I told him I had received so much money, but I could pay that back, or I was willing to pay that back; something of that kind.

Q. What did you say next?

A. I told him the lots were worth more than Judge Henry had agreed to sell them for.

Q. When did you find that out?

A. Well, I found it out when I got here.
Q. When you got to Denver?
A. Yes; and meeting folks and talking about it.
Q. Were you out on Sunday looking into the matter?
A. Well, I was around, most generally am, investigating prices, values, etc.; not very much. I went to church Sunday evening.
—. Did you? You didn't go in the morning?
A. No, sir.
Q. You had found out; you discovered before you went to see De Sollars the lots were worth more?
A. Yes, sir.
Q. How long were you there with De Sollars that time?
A. Oh, perhaps ten or fifteen minutes.
Q. And before you left there you had a talk with Mr. De Sollars about raising this money before the 24th, and he told you he didn't think he could get it?
A. Yes, sir; he said he would see what he could do; he didn't know as he could.
Q. You went back the next day—are you sure about that?
A. Yes, sir.
Q. What day of the week?
A. That was Tuesday.
Q. What time of the day were you there?
A. Well, I could not swear to that positively.
Q. What is your best recollection about it?
A. My impression is it was at noon. I am not positive.
Q. That is your best judgment?
A. I think I planned to get there about that.
Q. Was his school in session at that time?
A. It has been in session when I have been there. I could not swear.
Q. Was it the first time?
A. I think he had closed up or at least come out.
Q. Do you want to be understood as saying he had closed it or not?
A. I could not swear; we had our talk out in the hall; I did not go into the room; I don't know whether the school was in session or not.
Q. You did not see inside of the room?
A. Perhaps I did, but I don't know that I did.
Q. You don't remember anything about it?
A. No.
Q. Still you volunteer the information he had dismissed it—just on the outside. You went there—you say you went around there to see whether he was going to be able to raise the money before the 24th?
A. Yes; I was a little anxious.
Q. He told you, then, he did not know whether he could or not?
A. That was about the substance of that talk.
Q. You went back there on the 15th?

A. Yes, sir.
Q. Was it the 15th or 13th?
A. It was the 15th I went there with the abstract.
Q. It was on the 13th he reminded you he hadn't had the abstract?
A. Yes, sir; correct.
Q. Then you went back on the 15th with the abstract?
A. Yes, sir.
Q. He told you again on the 15th he didn't know as he
150 could receive the money before the 24th?
A. Yes, sir. He would do the best he could.
Q. What time of day was it when you got there on the 15th with those abstracts?
A. I think that was in the morning.
Q. What time in the morning?
A. Well, somewhere, perhaps, between nine and ten o'clock. I am pretty sure it was.
Q. Was his school in session at that time?
A. I think it was; yes, sir; it was.
Q. Pretty sure of that?
A. Pretty sure.
Q. You are rather more sure about it than you are about the others?
A. Some things I know; some I do not.
Q. You left the abstract?
A. I left the abstract.
Q. You made the arrangement you would meet at Judge Henry's somewhere between twelve and one?
A. That is my impression. Anyhow, we were there at that time.
Q. You did not in the first instance swear to it as an impression, you stated an arrangement was made at twelve o'clock, did you not?
A. About noon, somewhere, from twelve to one o'clock, is what I meant to say.
Q. Well, about noon. Well, did you get around to Henry's office at noon that day?
A. I was there between twelve and one.
Q. That same day?
A. Yes, sir.
Q. Was Mr. De Sollars there?
A. Yes, sir.
Q. Henry was there?
A. Yes, sir.
Q. De Sollars had the abstract?
A. Yes, sir.
Q. And according to your understanding then Mr. De Sollars' attorneys had examined and passed upon it and given him an opinion on these two abstracts between the time you were at De Sollars' offices that morning and at noon that day?
A. Yes, sir.
Q. And Mr. Malone had found some fault with this abstract, and found there was some receipt on there?

A. He thought so; yes, sir.

Q. You had a talk trying to convince Mr. De Sollars that was of no consequence, your warranty deed was good?

Q. Yes, sir; it was a mere blackmailing scheme. I did tell him that.

Q. You went with him to Malone's office to convince Malone?

A. Yes, sir.

Q. You went back with him to his private office to convince him over again?

A. To talk the matter over with him.

Q. After that you went to Mr. Bentley's?

A. I would not be positive whether it was after that. My impression is it was after that; but I would not be positive about that. I went there.

Q. And did you meet Mr. De Sollars there?

A. I went to Judge Bentley's office and met Mr. De Sollars there.

Q. When was that?

A. I could not swear whether it was after I went to De Sollars' office or before, but I think it was after; it was on the 15th.

Q. The same day?

A. I am pretty sure it was.

Q. In the afternoon?

A. In the afternoon; yes, sir.

Q. Were you ever at Mr. Bentley's office with Mr. De Sollars but once?

A. I don't remember that I was.

Q. How long were you there together?

A. Oh, probably fifteen or twenty minutes.

Q. You say you took him there to have Judge Bentley explain you were responsible and your warranty deed was good?

A. Not so much that as that the Dubbs receipt was of no account; that was the principal thing. It wasn't so much about my deed. I didn't care whether he took it. That was the amount.
151 He could explain about that receipt of Dubbs' better than I could.

Q. You talked that all over at Judge Bentley's office, did you?

A. Yes, sir.

Q. Judge Bentley explained how this was a blackmailing affair, he should not be afraid, and all that sort of thing?

A. Yes.

Q. When did you see De Sollars next after the 15th?

A. I think on the 20th.

Q. That was at night?

A. No, sir; that was in the afternoon of the 20th.

Q. Where did you see him at that time?

A. I think at his office I got a line from him he wanted to see me at the St. James hotel.

Q. You got a line from him?

A. Yes, sir; a note, and also Judge Henry told me that Mr. De Sollers wanted to see me; Judge Henry told me and made an appointment.

Q. You got a line from both De Sollar and Judge Henry?

A. I didn't have any line from Judge Henry; had a notice from him.

Q. That Mr. De Sollars wanted to see you; and he told you on that occasion he was going into the real-estate business?

A. That evening he did.

Q. You stated it was in this interview?

A. That is correct.

Q. The interview occurred at night, didn't it?

A. Yes, sir.

Q. This paper you talked about here was drawn up on that occasion?

A. Yes, sir.

Q. Nobody present but you and Mr. De Sollars?

A. No, sir; I had been to Mr. Bentley's office before that.

Q. You were there together considering this paper; it was after night?

A. Yes, sir.

Q. This was the meeting you had gone to because Mr. De Sollars had sent you word and you wanted to see him?

A. That is correct.

Q. This paper you identified here, you say that was written there that night?

A. Yes, sir.

Q. From which Mr. De Sollars subsequently erased his name, and from which you subsequently erased your name?

A. Yes, sir.

Q. Where did you erase your name?

A. I could not say about that.

Q. You don't know who that was?

A. I could not tell; no, sir. It is erased, and I suppose I erased it.

Q. You were not willing to take a copy of this paper up to Judge Bentley to have him look at it?

A. No, sir.

Q. Do you know why?

A. Yes; I wanted the original paper; I thought he was going to get me in a trap; I didn't want to have my name on a paper without knowing what it was.

Q. He struck his name off; after you got it you struck your name off?

A. I left the paper with him.

Q. You did finally take it?

A. Yes, sir; I did after considerable—next morning.

Q. When he did give it to you he took his name off after you insisted on taking the original; were not willing to trust him?

A. He took his name off; yes.

Q. After you got it you took your name off and never gave it back?

A. I had no idea of taking it and giving him all I wanted when I asked for it.

Q. Do you remember where you took your name off?

A. I don't — whether it was at Judge Bentley's office or
152 where it was; I could not tell you. I know he erased his name off of it.

Q. You had become suspicious during the night?

A. I thought he was so nice the night before—going to make so much, I thought he had an object in it. I didn't rest very well that night, to tell the truth.

Q. The paper is not very intricate; it is a simple proposition; the old deal between you and he should be off; he could sell this property and divide the difference between — ?

A. It was sort of ratifying this.

Q. If that paper had stood it would have been altogether immaterial, wouldn't it?

A. Yes.

Q. And it would simply have been a question about his getting six thousand dollars, dividing the difference between you and he, whether you should get a thousand——

A. Mr. Bentley told me I didn't want to sign any such paper or such an agreement.

Q. So you took down a paper that suited you better?

A. Yes, sir.

Q. And then Mr. De Sollars hadn't the least idea of signing that paper that Judge Bentley wanted you to have signed?

A. Yes, sir.

Q. You said something about his tearing up the copy he made?

A. Yes, sir.

Q. When did he do that?

A. When I went back with what Judge Bentley drew up for me—a sketch for us both to sign, so it would be fair for both.

Q. That kind of ended this paper business?

A. Yes, sir.

Q. The next time you saw him was on the evening of the 21st?

A. Yes, sir.

Q. Then you went around there with a deed to this same property?

A. I went around to see him in relation to the property.

Q. You went around there with a deed?

A. I was ready to give him a deed; I asked him if he would accept a deed.

Q. Didn't you say you tendered him a deed?

A. I tendered him fifty dollars in money; I was ready to give him a deed.

Q. Didn't you say you had come around and tendered him a deed?

A. From me to him—I did.

Q. Was that true?

A. It was.

Q. Did you have the deed with you?

A. No; I did not.

Q. When you came around to offer him a deed you didn't have any deed with you—you didn't offer a deed?

A. Yes, sir; if he would accept it.

Q. Did you offer him a deed or not?

A. I did—yes, sir.

Q. But you didn't have any?

A. No, sir; that is true.

Q. And, then, when was it, Mr. Hanscome, Mr. De Sollars came to you and told you he would take that property, notwithstanding the Dubbs and Chittenden matter?

A. On the evening of the 23rd.

Q. That was the first time, was it?

A. Yes, sir.

Q. But you didn't testify to that when your own attorney asked you about it?

A. I don't know; I expect there are a great many things I didn't tell in this matter I could. There is nothing I want to keep back in the transaction.

Q. You told him what your papers were, and that Col. Bentley told you to have nothing more to do with it?

A. Yes, sir.

Q. That the property was not for sale; you got on the train and went back, and two days after that you sold to Mr. Farnham?

A. Yes, sir.

Q. What town did you say those lots were in—Denver?

A. No; Greensburg, Kansas, about seventy-five miles from Wichita.

153 Q. When were you there last?

A. I have seen parties——

Q. Never been there?

A. No, sir.

Q. How big a place is it?

A. A place, I should judge from my impression, a couple of thousand inhabitants.

Q. That is your impression?

A. Yes, sir. I don't know. We sell a good many goods there.

Q. You do?

A. Yes, sir.

Q. How many lots were you to get in that suburban town?

A. I think four.

Q. Was the deed made out to them?

A. No, sir; it was not. It was to be made out; the agreement was made.

Q. Have you got that agreement with you?

A. I don't think I have.

Q. Don't you know whether you have or not?

A. I am not sure about it.

Q. Don't you know whether you were to get two lots or four?

A. I know I was to get three or four; I think four.

Q. You don't know whether it was three or four?

A. All he had there; he had some lots.

Q. Do you want to be understood you don't know whether you got three or four lots?

A. I am pretty positive it was four lots.

Q. I see you get a little more positive all the time, or will you leave it either three or four?

A. I think four.

Q. You want to be understood as saying you don't know whether it was three or four?

A. Not positively.

Q. Do you know the name of the street on which they are situated?

A. I do not.

Q. How near the post office?

A. I do not.

Q. Do you know whether they are very well located lots?

A. I have heard several parties speak about them.

Q. Do you know how near the post office they are?

A. I could not tell you the exact feet.

Q. Anything else told you about the town that you remember? Have you an abstract of title?

A. No, sir; Mr. Farnham has.

Q. Have you ever had it?

A. I have seen it.

Q. Have you had it examined?

A. I examined it myself.

Q. When did you do that?

A. I done that last March.

Q. What time last March?

A. The time we were making this trade.

Q. Have you got that abstract with you?

A. I have not; no, sir.

Q. Nor the contract—you have seen the contract?

A. Well, that was a verbal contract.

Q. There was no writing?

A. There was no written contract in those lots, no more than I had his notes.

Q. What do you say, you had his notes for three thousand dollars and a check for fifteen hundred dollars?

A. Yes, sir; seven hundred and fifty dollars, four years.

Q. Although you had that abstract and examined it, you can't tell whether you were to get three lots or four?

A. I am pretty sure it was four; it don't matter. They were two thousand dollars consideration.

Q. Who is Mr. Farnham?

A. He is a gentleman resides in Wichita.

Q. How long have you known him?

A. For a dozen years.

Q. Is he here?

A. No, sir; he is not.

154 Q. Where is he now?

A. In Wichita.

Q. How long ago did you see him?
A. Two or three weeks ago, when I left there.
Q. He has been a partner of yours?
A. Yes, sir.
Q. A partner now?
A. Yes, sir.
Q. In the dry-goods business?
A. No, sir.
Q. What kind of business?
A. Jobbing business; manufacturing.
Q. Being he is a partner of yours, I suppose you thought his notes were good?
A. Yes, sir; I know they are or were. We have had real-estate deals before this; years ago.
Q. There will be time enough for you to tell that when you are asked; you might be liable to the imputation of being overly willing. I want to know if you want to be understood as saying that you had no meeting or conversation with Mr. De Sollars between the 15th and the 20th of March last.
A. Not to amount to anything that I know of.
Q. Do you want to be understood as saying that you don't remember any such meeting or that none occurred?
A. I think I met him; I could not tell when it was; I went on and forgot; had nothing to do with him after that; I met him on the street one day; he followed me up; that was all; I had forgotten that.
Q. You want to be understood as saying you had no talk with him between the 15th and 20th of March?
A. No, sir.
Q. You don't want to be understood you are willing to state that as a fact?
A. That is my impression.
Q. You only state it as an impression?
A. I state it as a fact; I might be mistaken, but I don't think I am.
Q. You are willing to state it as a fact?
A. I don't want to misrepresent anything.
Q. And the first conversation that you ever had with him in which he told you he would take this property, notwithstanding the Dubbs and Chittenden matter, was on the night of the 23rd of March?
A. Yes, sir; that is true.
Q. And that was in the presence of whom?
A. Some gentleman he brought in with him; I think he introduced him as Mr. Thompson; some one in your office, Benedict & Phelps's.
Q. Then his name is not Thompson, by a good deal; it was not me, was it?
A. No, sir; I have known you for some years; I never saw this man before.
Q. This conversation which occurred on the 21st of March you

want to be understood as being the last interview between you and Mr. De Sollars before he came up there at the St. James hotel; at that conversation the man Herbert was present; Mr. Herbert is a son-in-law of yours?

A. Yes, sir.

Q. Married a few weeks after that?

A. Several months; a good many months.

Q. About the time this suit was begun?

A. No, sir; since—quite awhile since.

Q. Do you remember of meeting Mr. De Sollars on the 18th of March on the corner of 16th and Custis street-?

A. No; I do not; I remember meeting him some time casually on 16th St., as I said before.

Q. Do you know a gentleman by the name of Kilburn?

A. No, sir.

Q. Didn't you, on the 16th of March, meet Mr. De Sollar and Kilburn on the corner of 16th and Custis, and have a conversation about taking this property again?

155 A. No, sir; I did not, but I did meet him hurriedly on the street one day between 15th and 20th.

Q. You do remember now that you met him? Did you have any conversation?

A. No, sir; I did not. He ran up, kind of ran up to me; I didn't know but he was going to strike me. He said something; I don't know about what. I told him to go to the hotel; the street was no place for a conversation.

Q. You did have a conversation?

A. No; I went right on about my business.

Q. When he spoke to you, commenced to talk to you, you told him that was not a place to have a talk; you don't call that having any conversation at all?

A. That is a mere accidental meeting. I thought he looked and acted as though he felt angry towards me, and I didn't care to stop in the highway.

Q. I think after you get your recollection refreshed you may be able to remember some things. Don't you remember you stood on the corner of 16th and Curtis St. on that occasion talking two or three minutes, and that in that conversation Mr. De Sollars talked to you about — Dubbs and Chittenden stated, told you that matter was all right and, notwithstanding that receipt, he was ready to take the property?

A. He never told me that at all; I didn't stop really to hear what he did say, because I thought it was rather an insult.

Q. This was about four or five o'clock in the afternoon. Do you remember the time you met, the hour?

A. No; I don't remember about that. I should say I met—I remember meeting him. It was the public thoroughfare on 16th and Curtis street-, the crowd going here and there.

Q. You remember that you had some talk with him?

A. I merely saw him.

Q. You passed some words?

A. Something was said, but what it was I didn't pay any attention.

Q. You didn't remember any of that at all a few minutes ago?

A. I remembered as much as I do now.

Q. Didn't you state you didn't have any recollection of meeting De Sollars?

A. No, sir; I was not positive; I met him casually on the street, the same as I meet——

Q. You are able to fix the place?

A. Yes, sir; I remember that distinctly.

Q. And the hour?

A. No, sir.

Q. And conversation?

A. There was something said; what it was I don't know.

Q. You never did have a deed made out whatever for these lots to Mr. De Sollars?

A. No, sir; he never told me he would take a deed.

Q. Were you ever present with Mr. De Sollars and Mr. Malone and have a conversation about this on this subject and about this title?

A. Yes, sir.

Q. I thought you said to Mr. Bentley that when you went up to Mr. Malone's office you found Mr. Malone's partner and did not find Mr. Malone?

A. Perhaps I said so, which was true. *A.* Mr. Malone came in afterwards.

Q. While you were there on that same occasion?

A. It was not brought out. He was not there when we went in, but he came in.

Q. Do you know what conversation took place between you and Mr. Malone?

A. I have related it.

Q. I understood you to relate the conversation which took place when the clerks and Mr. Steele were present; you just went
156 over the ground again after Mr. Malone came in?

A. I think so.

Q. It was the same thing you told Mr. Henry?

A. I suppose it was.

Q. Have you told all the conversation that took place with Henry?

A. As near as I am able to.

Q. You did not say anything in respect to the fact that you repudiated this contract—the contract of Henry's?

A. I have said that repeatedly.

Q. On the 15th, at the time you and De Sollars and Henry——

A. We were trying to fix it up.

Q. The contract was not mentioned; you did not in the conversation *at* Malone say anything about that?

A. No, sir.

Q. You did not in a conversation on the corner of Curtis and

16th—did not have any talk. I say you did not say anything about that there, either?

A. Did not have any talk at all, any more than I made a reply. I don't know what he said to me.

Q. The substance of the conversation—just state the conversation that occurred between De Sollars, yourself, and Malone after Malone came in.

A. Well, I told them about that receipt not being made of any account.

Q. State what you said.

A. I am getting at it in my way, the best way I could.

Q. I want you to use your language as nearly as you can.

A. Just the same thing I have told at different times; the purport is the same.

Q. In other words, you have told the same thing over so many times you are sure you get it the same every time?

A. No, sir; the meaning is the same; the purport is the same.

Q. You are sure that is true in respect to pretty near everything you have testified here?

A. Yes, sir.

Q. You have talked all over these different things so many different times?

A. I have talked over with De Sollars.

Q. Won't you be kind enough to give us the conversation between Mr. Malone and De Sollars and yourself? Please state what you said to Malone and Malone to you; the language you used, the language he used, as near as you can give it when Mr. Malone came in. Did you say good morning?

A. I could not tell you about that. I don't think there was very much conversation with Malone when he came in; it seems to me he was in a hurry.

Q. I thought a moment ago you detailed an entire conversation you had had.

A. That would not take very long; it was the same conversation I had over at Henry's. I would not know Malone if I should see him.

Q. Do you want to be understood as saying you had the same conversation at Malone's you had at Henry's?

A. I suppose we did if we had any conversation.

Q. Did you have any conversation with Malone?

A. I presume so.

Q. A little while ago you did not have any presumptions about it. Did you or did you not?

A. I probably did, some of them. I think to them all I explained.

Q. You are not certain you had any such conversation?

A. I guess there is no doubt about it at all.

Q. I want to know what your recollection is. If you had any conversation with Malone at all, what was it?

A. It was in relation to this Dubbs receipt; I should take my

time in getting that off. Mr. Bentley said it didn't amount
157 to anything; it was a blackmailing operation and unnecessary. He could get it taken off for some less sum; have it removed by order of the court; something of that kind.

Q. That is what you said to Malone. Did Malone do any talking at all?

A. I would not know Judge Malone from Mr. Steele.

Q. If I could describe him to you—did you talk with a black-haired man?

A. I didn't see any light-haired man. I didn't notice their hair. I was not examining it.

Q. You can't say whether the man you talked with there at Mr. Steele's office was a man with black hair or light hair?

A. No; I could not.

Q. Could not tell whether an elderly or a young man?

A. I could not. They weren't very elderly men, either of them.

Q. Not very elderly?

A. No, sir.

Q. Now I understand that you are positive about seeing Mr. De Sollar on the 12th, 13th, and 15th of March?

A. Yes, sir.

Q. And you are positive that on the 15th you gave Mr. De Sollars the abstract?

A. Yes, sir.

Q. Some time after nine and before twelve o'clock?

A. Yes, sir.

Q. And you are quite sure on that day when you visited him his school was in session and open before nine o'clock in the morning. That is the one day you are rather certain his school was in session, and that you met Mr. De Sollars at Mr. Henry's office between twelve and one o'clock of that day?

A. I think so; yes, sir.

Q. In the meantime, according to Mr. De Sollars' statement, Mr. Malone had examined these abstracts and reported on them?

A. Mr. Malone examined them in the office there with Mr. De Sollar.

Q. You stated *and* had found these before, and that you did not meet again until the 20th, except this casual meeting on 16th St. So that the abstracts, if Malone examined them at all, were examined between the time you saw De Sollars—between twelve and one o'clock of that same day?

A. Yes, sir.

Q. And then on the 20th you went around and had this paper, the evening of the 20th this paper was written, about which you got into a difference on the following day—on the evening of that day you went around and offered the deed and then offered the fifty dollars?

A. Yes, sir.

Q. You knew, as a matter of fact, that fifty dollars was not all that Mr. Henry had received?

A. I did not know it.

Q. You did not know it?
A. No, sir.
Q. Did you have any reason to suppose it was not all he received?
A. Yes, sir; Mr. De Sollars told me.
Q. Aside from Mr. De Sollars?
A. I think not.
Q. How long have you known Mr. Henry?
A. I have known him for three or four years.
Q. How well have you known him?
A. I have known him casually.
Q. When was it that he so became interested in the sale of your property?
A. I never wanted him to interest himself very much in the sale——
Q. I didn't ask you that. I asked when it was.
A. I don't really know how he got—I think I called on him on a business matter one day and I told him, gave him the numbers of these lots, about my having some property up there. He
158 would try to find a customer; that is the way he would be able to pay me. He was owing——
Q. You asked——
A. Well, I knew him.
Q. You think if anything would reflect on Mr. Henry's credit you would get the benefit of it?
A. No, sir; not at all.
Q. I believe you stated to Mr. De Sollars you would like to see Henry's deal go through; you thought he had acted honestly?
A. I said that on the first meeting I thought he was square.
Q. On that occasion you learned Henry had received part of this money he had not forwarded to you?
A. Yes, sir; that was the first I knew of it.

Mr. Bentley asked the court to reserve the right to call Mr. Hanscome on that other matter.

ELMER W. MERRITT sworn and examined:

* * * * * * *

Court adjourned to May 10th, 1889.

F. W. HERBERT sw-rn and ex'd:

* * * * * * *

Mr. HANSCOME recalled and examined by Mr. BENTLEY:

Q. On yesterday, Mr. Hanscome, when interrogated by me, you stated that you thought that this transaction with Mr. Merritt, exchanging these three lots for some other lots, had taken place the first week in December, but you could not state particularly the time. Now, are you able to state the time with more particularity?
A. I am.
Q. What time did that transaction close between you and Mr. Merritt?

Q. It was in November; early in November. When I gave my testimony yesterday——

Q. Wait a minute; wait a minute. About how early in November?

A. I think in the first week in November.

Q. How are you able now to state that fact?

A. I wasn't sure yesterday whether I arrived here the first week in November, from San Francisco, or the first week in December. It was soon after my arrival. That is why I said —. After thinkof it I remembered I was in San Francisco on election day—national election day. I came the next day but one, stopping over at Salt Lake City; came from San Francisco here in about three days. This trade was some date soon after my arrival; within a few days. That is why I said it was the first week, because I was thinking I was in here the first week in December, instead of the first week in November.

159 Cross-examined by Mr. PHELPS:

Q. What day of the month did the last presidential election occur upon?

A. I could not say; it was Tuesday in the week.

Q. What day of the month?

A. It was early in November somewheres; I don't know; the 4th, I guess.

Q. How long does it take to come from San Francisco to Denver direct?

A. About two days.

Q. What day of the week did you leave San Francisco?

A. I could not tell you; I left the next day but one of the election Tuesday. I left Thursday.

Q. What day did you get to Salt Lake?

A. I got there Friday.

Q. What time did you leave Salt Lake?

A. I don't remember; I could tell what time in the day the train arrived at Salt Lake. *A.* Arrived there in the morning.

Q. What time in the morning?

A. About eight or nine o'clock.

Q. By what train did you come from San Francisco to Salt Lake?

A. I came over the Southern Pacific.

Q. By what road did you come from Salt Lake to Denver?

A. The Denver and Rio Grande.

Q. What time of day did you get into Denver?

A. Got into Denver in the evening.

Q. What time of day?

A. Somewheres about nine o'clock in the evening.

Q. Do you say the Salt Lake train for Denver arrived here in the evening? Did at that time?

A. Yes, sir; did at that time.

Q. Last November?

A. Last November.

Q. What day of the week was it?

A. I think it was Saturday night I arrived here. I am not positive whether it was Friday or Saturday; Saturday, I think.

Q. So you think you left San Francisco on Thursday, stopped a day at Salt Lake City, and got here Saturday over the Denver and Rio Grande road?

A. Yes, sir; I think so.

Q. How long were you in town before you saw Mr. Merritt?

A. Not very long; I think that was one of the first calls I made.

Q. Did you transact any business with Merritt on Sunday?

A. No, sir; I did not. I did not call on him on Sunday.

Q. How long after Sunday before you called on him?

A. I could not tell about that; very likely I called the next day. I always called into his office generally the first day after I arrived at Denver when I had been away.

Q. Do you still own this property?

A. I do.

Q. What is the value of that property at this time?

(Objected to.)

A. I don't know.

Q. You don't know what it is worth?

The COURT: He did not open that subject.

Q. When you stated in your direct examination yesterday that you had these abstracts brought down what did you mean by that?

A. I meant the abstract was brought down to all the transactions that had been made; no transactions since.

Q. You mean certified so it would show everything up to that date?

A. Yes, sir.

Q. Which was the 15th of March?

A. The 15th of March.

Q. You said something in your testimony yesterday about refusing to have this receipt removed; it was mere blackmail, etc. Is it a fact you afterwards got a quitclaim deed from the parties to wipe out that receipt?

A. I did.

160 Q. That is the Chittenden and Dubbs receipt?

A. Yes, sir.

Mr. Bentley here offers in evidence the abstracts identified by Mr. Hanscome as furnished to Mr. De Sollars.

Mr. PHELPS: I want to know if they are the same abstracts furnished to Mr. Merritt.

PLAINTIFF: They are.

Mr. BENTLEY:

Q. Are these the identical abstracts Mr. Merritt saw?

Mr. HANSCOME:

A. They are.

Plaintiff rests.

H. S. DE SOLLARS sworn.

Direct examination by Mr. PHELPS:

Q. You are the defendant in this case?
A. I am; yes, sir.
Q. When, if ever, did you first meet Mr. Hanscome?
A. The first time I met Mr. Hanscome was on the 13th day of March, 1888, Tuesday.
Q. Where did you meet him?
A. At my office door.
Q. Where is that?
A. In the Opera House block; in the fourth floor, room 59.
Q. Who was present?
A. No one excepting Mr. Hanscome and myself.
Q. Did you know him at the time he came?
A. By his introduction to me I did.
Q. That was afterwards?
A. It was during the conversation.
Q. State to the jury what took place between you and Mr. Hanscome at that interview.
A. Mr. Hanscome came to the door; he first sent word by one of the students who was sitting at the door; the student came up and informed me a gentleman by the name of Hanscome wished to see me. I went to the door and he asked if this was Mr. De Sollar. I told him it was. He introduced himself and said, I am Mr. Hanscome, from Wichita. I believe you bought some property from my agent, Mr. Henry, did you not? I told him I did. He asked me if I was ready to comply with the terms of the contract. I told him that I was and had been, and with that he handed me the abstract, and glancing at it I saw it was not brought up to date; I called his attention to it and I told him it was customary to have the abstract brought up to date. I should like to have him comply with the custom. With that I handed it to him and he said he would have it brought up to date.
Q. Go on and state anything else.
A. He took the abstract and said that he would have it attended to. In that conversation he remarked, says he, I would like to have this matter fixed up as soon as possible. I don't expect to remain in the city but a few days. I told him I could fix up the matter just as soon as my agent would report on the abstract; I was ready and had been since the date of the contract.
Q. Did he state in that conversation to you that he had seen Mr. Henry?
A. He did.
161 Q. Did he state in that conversation anything about receiving a letter from Mr. Henry?

A. He did. He said that he had received a letter from Mr. Henry acknowledging the sale, and in it contained a draft of fifty dollars; that he had received it just before leaving Wichita.

Q. What, if anything, did you say in regard to the matter of the money? If anything, state all that you said there on any subject.

A. There was nothing more said at that meeting as I remember.

Q. State whether or not in that conversation Mr. Hanscome said anything to you about repudiating the contract Mr. Henry had made for him.

A. He said nothing about it whatever.

Q. What did you do with those abstracts?

A. I handed them back to Mr. Hanscome.

Q. What became of them then? Did he take them away with him?

A. He did.

Q. When did you see him next?

A. The next time I saw Mr. Hanscome was on the 16th of the month.

Q. When did you receive the abstracts back again, if at all?

A. I received the abstracts from Mr. Henry at my office door on the 15th, between the hours of nine and ten o'clock.

Q. What did you do with the abstracts after you received them?

A. I immediately took them to my attorney and told him I should like to have him look them over and give me his opinion; that Mr. Hanscome stated——

Q. Who did you take them to?

A. Mr. Malone, of Steele & Malone; in the same building.

Q. On what day?

A. I took them on the 15th; right after Mr. Henry had handed them to me.

Q. When did you next receive the abstracts?

A. I received the abstracts the next morning. Mr. Malone——

Q. You say you saw Mr. Hanscome again on the 16th?

A. I did.

Q. Where?

A. First I met him coming across the street from the St. James.

Q. On the 16th?

A. On the morning of the 16th.

Q. What transpired between you?

A. I told him that my attorney had informed me there was a cloud or receipt, rather, had been filed against this property, and that before Mr. Malone had given me a written opinion upon it he would like to talk with the principal, Mr. Hanscome, and that he would like very much to have him come up to the office.

Q. Did you arrange for any meeting with Mr. Hanscome?

A. I did.

Q. Where?

A. Right then and there we went up.

Q. Where?

A. To Mr. Malone's office.

Q. Did you have a meeting that day at Mr. Henry's office?
A. I don't know that we did. I can't recall any.
Q. You and Mr. Hanscome went together to Mr. Malone's office?
A. We did.
Q. On the 16th?
A. We did.
Q. What took place there?
A. Mr. Malone took the abstract from his table and called Mr. Hanscome's attention to a Chittenden receipt for $25.00 which had been filed against it and said while it was a small amount he told Mr. Hanscome that it better be removed; that it was a small affair. Mr. Hanscome became indignant and said it was nothing but a piece of blackmail, and if I wanted it removed I would have to do it myself.
Q. How long were you there?
A. About 15 or 20 minutes; no, I should not say it was quite so long as that; probably it was ten or fifteen minutes.
162 Q. Did you and Mr. Hanscome go out together?
A. We did not.
Q. Did you meet Mr. Hanscome again that day?
A. I did not.
Q. When did you see Mr. Hanscome again?
A. I saw Mr. Hanscome again on the 17th, between the hours of four and five o'clock.
Q. How do you determine that date?
A. I determine that date by a certain article that was drawn up between Mr. Hanscome and myself in reference to a certain compromise written on the 20th, a copy of which I have.
Q. How does that enable you to fix the date?
A. That it was some three days before the drawing up of this article.
Q. Who was with you at the time you met Hanscome on 16th and Curtis street?
A. A gentleman by the name of Mr. Kilbourne.
Q. What took place at that meeting? State the conversation as near as you can, the way it begun and all that was said and done between you; how you met, how you parted, and everything?
A. Well, *A. Well*, I might state by way of explanation I had quite a little difficulty in finding him.
Q. At the time of the meeting what was the first thing you told him?
A. I met Mr. Hanscome, spoke to him, said, Good evening. I introduced him to Mr. Kilbourne. I told him I was looking for him and had a good deal of trouble in finding him; I could not find him at Mr. Henry's office; could not find him at the hotel; didn't know whether he had left the city or not. He said he had been in the city, but expected to leave in a few days. I then informed him I had seen Mr. Chittenden and had arranged to have him give a quitclaim of that receipt which he had filed against the property that he had taken from a man by the name of Dubbs, and I had decided if he, Hanscome, would not remove that receipt I

should do it at my own expense in order to get his deed; that I was ready and had been and wanted this matter closed up immediately.

Q. What did he say to that?

A. He said that he had left the matter with his attorney, Mr. Bentley?

Q. Did you subsequently see Mr. Bentley?

A. I never had met Mr. Bentley at that time.

Q. You subsequently saw Mr. Bentley?

A. I afterwards saw him; yes, sir.

Q. What else occurred at that conversation?

A. Nothing. He said that what I have just stated—that he had left the matter with his attorney; he should have nothing more to do with the matter, and went over to the St. James.

Q. Had he up to that time, in any conversation at any time or place, told you that this sale or agreement was off?

A. Never.

—. Had he up to that time ever said anything to you about repudiating the contract or about returning to you the money or any part of it?

A. Never.

Q. When did you next see Mr. Hanscome?

A. The next time I saw Mr. Hanscome was at my office on the 20th of the month, between the hours of four and five, close to dusk. It must have been in the neighborhood of five o'clock.

Q. How long were you together then?

A. Some half an hour.

Q. What transpired on that occasion?

A. On that occasion Mr. Hanscome came; says he, Mr. De Sollar, says he, you have three letters, personal property of mine, which I have written to Mr. Henry, and I demand of you to give them to me, sir. Shall I repeat all the conversation which took place? I informed him that these letters probably should have to serve me for a future occasion. I told him that this sale had been hanging fire; that I was ready and had been from
the day of the contract to comply with my part of it, and
163 that I should like to have the matter closed immediately.
He seemed arbitrary in the matter. I told him it was not my wish to buy a lawsuit; I was in no condition to buy one; I should like to have him get his deed ready; I was ready and wanted the matter closed up. He seemed arbitrary in the matter; would do nothing. I then told him that my counsel had informed me that if he would not comply with this contract that for self-protection I should have to file these letters in record against this property. It was not my wish to do it; I didn't wish to cloud any one's title; I bought this property in good faith; that I wanted to comply in good faith with the contract, and that I insisted upon his getting his deed ready. He would do nothing. I believe I told him—said I, I see, Mr. Hanscome, you are dilly-dallying in this matter, and I realize that my time is short; that the contract expires on the 24th, which you have ratified by your abstract. Now, then, I will tell you what I will do—not that I wish to nullify the original contract in

the least; I prefer to stand upon the merits; I will make this concession: I will allow that property to be sold. In whatever conversation he had at that time he spoke that the property had advanced in value, and it had been sold too cheap, and I told him there was probably no question at that time the property was worth more on account of definite cable news of a cable which had been definitely decided on, as the article had been signed; there was no question but what property had taken a little spurt at that time. In his conversation he said the property was worth a thousand to fifteen hundred dollars more, which was a mere "fake;" but no question but what it was worth a few hundred dollars more. I told Mr. Hanscome that while I did not wish to invalidate the original contract, at the same I did not want to have a lawsuit; that I was not (afraid) to have a lawsuit; at the same time I wanted to have a peaceful settlement, and that I would make this concession as a kind of compromise. I told him that I would allow that property to be sold for what it would bring; that I would allow the agent's commission to be deducted from it, and he would also allow this Chittenden receipt to be removed, and that if I should sell the property I would make no charge whatever for my trouble, and what was left after deducting these receipts, the agent's commission the Chittenden receipt, and deducting his five thousand dollars, if anything was left I would be willing to divide it equally. He jumped at the conclusion; said he would like to have it put in writing, which I did.

Q. Who wrote the paper?

A. I did.

Q. Did you state anything to Mr. Hanscome at that time that you were about to go into the real-estate business?

A. I never had such a thought.

Q. Is it fact you were about to do anything of the kind?

A. It is entirely foreign.

Q. Were you about to do anything of the kind;

A. I was not, and I did not.

Q. Did you state to Mr. Hanscome you were sorry you had done as you had on previous occasions?

A. I did not.

Q. Had you previous to that had any sharp or angry talk?

A. Not previous to that time; no, sir. Previous to that time I did not.

Q. You say you prepared that paper—the paper shown here yesterday?

A. I did.

Q. And you both signed it?

A. We did.

164 Q. Did you retain it that night?

A. I did.

Q. What was the next thing that occurred?

A. The next thing on the morning of the 21st, about eleven o'clock, Mr. Hanscome came to my office; it was a little later than about half past eleven; came to my office and asked me, Have you

got that paper we both signed last night? I told him I had. I neglected to say that in my conversation which took place on the 20th, on the evening of the 20th, Mr. Hanscome suggested that as it was growing late and he had an engagement for the evening I could write up a duplicate; he would be in the next day; we would both have a copy; Mr. Hanscome came in about half past eleven; he asked me if I had the article which we had both signed. I told him I had. He asked me to let him see it. I handed it to him, and stated. By the way, I have written off a duplicate; you may take the original and we will read over the duplicate, which he did. He said, It is all right; with the omission of one or two words, it tallies in every respect. I said, Mr. Hanscome, you can sign this article and we can each take one copy. He said, No; I came to inform you I shall not stand up to this contract; I have been talking with my attorney about certain engagements, acknowledgements, I shall not stand to. Says I, If that is the way you feel in the matter let me have the contract; I shall erase my name from it, which I did; handed it back to Hanscome and told him that was off; I should rely on the merits of the original contract; should have no more foolishness or child's play in this matter; took the duplicate.

Q. Did he subsequently come to you with the memorandum from Mr. Bentley?

A. Afterwards, in the afternoon, about four o'clock, he came with an article from Mr. Bentley, which he wanted me to sign. I told him I should sign nothing more, but should rely upon the original contract which I had; had made the contract in good faith and wanted it closed up.

Q. Have you the duplicate of that agreement of the 20th with you?

A. I have.

Q. You did not destroy it?

A. I did not.

Q. When did you see Mr. Hanscome again?

A. The next time I saw Mr. Hanscome was in the St. James hotel on the 23rd, at his room.

Q. Wasn't there a meeting on the 21st?

A. I beg pardon. On that same evening, on the 21st, Mr. Hanscome called at my office between the hours of seven and eight o'clock.

Q. And was any one with him?

A. There was.

Q. Who?

A. A gentleman that he introduced to me by the name of Herbert, who has recently testified.

Q. Where did the conversation between you take place?

A. In the vestibule hall, at my college door.

Q. How near to the door?

A. The door was open, and I was standing within two feet of the door.

Q. Did you not close the door after he came out?

A. I did not.

Q. Who was sitting near the door at the time, if anybody?

A. A gentleman by the name of Goldberg—his regular authorized seat; by the way, he says that evening when Mr. Hanscome came Mr. Hanscome was at the door and wished to see me.

Q. State what transpired between yourself and Mr. Hanscome.

A. Mr. Hanscome introduced me to Mr. Herbert, and then said that he was going to leave the city, and that here is fifty dollars in gold that he had received from Mr. Henry, and that he demanded of me those letters and the contract that Henry had given
165 me pertaining to a sale of some property, and that he would have nothing more to do with the matter.

Q. What did you say?

A. I told him—said I, You must take me for a darned fool. I said the contract with Mr. Henry was made in good faith; that I paid him a considerably larger amount of money than this, and he then said, Well, you will have to look to Henry for the balance of the money. Said I, Mr. Hanscome, you have tried to euchre me out of the sale of this property; you have dilly-dallied and made child's play through this matter from beginning to end; you don't seem to act like you wanted to have the matter consummated at all. Said I, I have contracted with Henry in good faith, and held myself in readiness to complete my part of the contract from beginning to end and, I insist upon you doing the same.

Q. You refused to take the money?

A. I did.

Q. What transpired on the 23rd at the St. James?

A. I merely took a witness there and repeated the conversation that I was ready to comply with this matter, and that I would like to have him close up the deal at once.

Q. In that conversation did you discuss the matter of the Chittenden and Dubbs receipt?

A. I did not.

Q. State whether or not prior to the recording of these papers, the letters, and Henry contract spoken of you consulted any lawyer with respect to your rights and in respect to what you ought to do to protect your rights in this matter.

Objected to. Objection sustained. Afterwards overruled.

A. I did.

Q. Who was it?

A. I went to the best and most experienced I——

Q. Never mind about that.

A. I went to Mr. Benedict.

Q. State whether you took with you any papers—documents.

A. I did. I took all the papers I had. I took three letters which Mr. Henry had given me; also took the contract.

Q. The same papers mentioned in these pleadings?

A. Yes, sir; the same contract Henry and I had both signed.

Q. State what you told Mr. Benedict with respect to what had occurred between yourself and Mr. Hanscome since Mr. Hanscome had arrived in the city.

Objected to * * *

The COURT: You can ask him whether he made the same statement to Mr. Benedict he has made here today.

Q. State whether or not you stated to Mr. Benedict what had transpired between you and Hanscome as you have stated it on this occasion.

A. I did; stated everything that had transpired.

Q. What, if anything, did he tell you respecting the matter of your rights under these papers and what you should do to protect yourself?

A. He told me to come in the next morning; that was the first thing he told me.

Q. At the time you finally got your advice what did he tell you?

A. His final advice was that as Mr. Hanscome had informed me that he had left this matter with his attorney—I might state previous to that——

Q. I want to get at the conversation with Mr. Hanscome in which he told you in regard to putting these papers upon record.

A. He told me then to go and take a witness to Mr. Bentley, as Mr. Hanscome had informed me that he had left the matter with his attorney, and to see if he was willing to comply with that contract; that if he was ready to make out the deed I was ready
166 to receive it, and if he did not to go and file these letters in regular order, and the contract, filing them for the protection of my individual rights.

Q. State whether or not you subsequently visited Col. Bentley after that time.

A. I never did.

Q. Did you understand my question? I asked you to state whether or not after this advice of Mr. Benedict's you went to see Mr. Bentley.

A. After this advice from Mr. Benedict I went to see Mr. Bentley with a witness and stated the conversation I have just stated. From there I went up to the court-house.

Q. Did Mr. Bentley make the deed or offer to make the deed?

A. He laughed at the idea; said, I have no authority; I have no deed to offer. That is what he said.

Q. Then you subsequently filed the papers?

A. I did.

Q. I want you to state whether or not in any conversation with Mr. Hanscome he ever in any shape or form denied or questioned the right of Mr. Henry to act for him or the correctness of what Mr. Henry had done?

A. He never did.

Q. Do you know the value of that property at this time?

A. I do.

Q. What is its value?

Obj'd to. Overruled.

—. (It is supposed to be worth eight thousand.)

Q. I asked you if you knew. You said you did.

A. I can approximate its value by adjoining property. That is the only means I have of knowing.

Q. You have stated you knew. I asked you to state what the value was.

A. It is between eight and nine thousand dollars.

Q. You never saw Mr. Hanscome to have an opportunity to talk with him subsequent to the 23rd of March?

A. No, sir; until this suit was begun I did not.

Cross-examination of Mr. DE SOLLAR by Mr. BENTLEY:

Q. I wish you would state in detail the conversation which you had with me when you called upon me.

A. When I called upon you?

Q. Yes, sir.

A. The conversation which I had with you, Mr. Bentley, was to this effect: That Mr. Hanscome had informed me that he had left this matter entirely with you, and that I called to see if you was ready to close up that matter—that contract; that if you was ready to deliver the deed I was ready to receive it. You smiled and said you had no deed to offer and ridiculed—apparently ridiculed my conversation.

Q. Is that all?

A. That is all.

Q. That is all you remember?

A. That is all that took place.

Q. Didn't you tell me that you were going to go and put those papers on record?

A. I don't remember making any such remark.

Q. You don't remember that?

A. I do not.

Q. Don't you remember that I told you if you put those papers on the record you would be sued for damages?

A. You did not.

Q. What time of day was it you were with me?

A. It was between the hours of three and four o'clock on the afternoon of March 24th, 1888.

Q. You went from my office to the register's office, did you?

A. I did.

167 Q. Who do you say was present at that conversation?

A. Mr. Morse.

Q. Where is he?

A. He is in the room.

Q. Did you go directly from my office to Mr. Benedict's?

A. I did.

Q. I understood you to say that is the only time you ever had a conversation with me upon the subject.

A. Upon that subject; yes, sir.

Q. Upon the subject relating to these lots and your matter with Hanscome.

A. Yes, sir.
Q. Who introduced you to me?
A. I introduced myself.
Q. On this occasion?
A. On this occasion.
Q. Don't you know, Mr. De Sollar, that two or three or four or five days before that you were in my office with Mr. Hanscome to talk about these very matters?
A. I most emphatically was not.
Q. Did not Mr. Hanscome request you to come and see me in relation to that Dubbs matter?
A. He did not.
Q. Do you mean to say you did not have a conversation with me relative to that Dubbs receipt on any other occasion unless it was the afternoon of March 24th? Do you mean to testify that previous to March 24th you did not have a conversation with me in my office in relation to that receipt?
A. I do.

Mr. PHELPS:

Q. One question I forgot to ask you, Mr. De Sollar: In the conversation on the night of the 21st, what, if anything, did you say respecting putting a cloud upon Mr. Hanscome's property or title which neither he nor his heirs could get rid of, or anything to that effect?
A. I never made such a statement. I merely told Mr. Hanscome that my counsel had informed me that if he did not comply with that contract for self-protection I should have to file those papers against the property.
Q. I want to ask you also: At the time of that conversation—I think, perhaps, you have already stated that, though—how near to you and Mr. Hanscome and Mr. Herbert was Mr. Goldberg?
A. He was sitting right at the door; my space is limited, very limited, there; the tables are arranged so one seat is right at the door, a regular authorized seat assigned to him, to Mr. H. J. Goldberg. He had been sitting there for some two months previous.
Q. You stated, I think, that you had repeatedly told Mr. Hanscome that you were ready and willing to comply with this contract whenever he could make this deed or after you had seen Dubbs and Chittenden about this receipt.
A. I told him repeatedly. I went to Mr. Henry's office repeatedly.
Q. Was that a fact?
A. It was. I tried to do everything in my power to prevail upon him to have this matter consummated.

Here followed the deposition of Mr. Henry K. Goldberg.

168 FREDERICK W. HERBERT sworn.

Direct examination by Mr. BENTLEY:

Q. Your full name?
A. Fred. W. Herbert.

Mr. PHELPS: Where the testimony of a witness has been taken upon a deposition and the deposition has been filed here, it seems to me that that ought——

The COURT: No, sir; he can call the witness if he can get him.

Q. Where do you reside?
A. In Denver.
Q. How long have you resided here?
A. About nine years.
Q. Do you know Mr. Hanscome and Mr. De Sollar, the parties in this suit?
A. I was introduced to Mr. De Sollar once; that is all I know of him.
Q. How long have you known Mr. Hanscome?
A. About five years.
Q. You are a son-in-law of Mr. Hanscome?
A. Yes, sir.
Q. When were you married?
A. The ninth of January.
Q. Last?
A. Yes, sir.
Q. Do you know the property in controversy here?
A. Yes, sir.
Q. Have you seen it?
A. Yes, sir.
Q. How was it as to being improved property in March, 1888, and now, down to the present time?
A. Vacant land, the same as now; vacant land.
Q. Were you present at an interview between Mr. De Sollar and Mr. Hanscome at any time touching these lots?
A. Yes, sir; on the 21st of March, 1888.
Q. What time of day?
A. It was about 7.30 in the evening.
Q. Where was it?
A. In the Opera House block.
Q. State whereabouts in the Opera House block, whether in a room or hall.
A. In the hallway on the fourth floor, in the main hall.
Q. How was your situation in relation to the school-room where Mr. De Sollar's school was?
A. We were outside of the school-room; the little hall between the main hall and the school-room.
Q. You were in the main hall?
A. Yes, sir.
Q. How about the door being closed?

A. Mr. De Sollar closed the outside door into the hall when he came out.

Q. What is the difference between that door and the door of his school-room?

A. I never measured; about eight or ten feet, I should judge, I guess.

Q. State whether you went to that place with Mr. Hanscome.

A. Yes, sir; I went with him from his hotel.

Q. Now, what transpired there between Mr. Hanscome and Mr. De Sollar and yourself, if anything?

A. Mr. De Sollar was called out from the school-room. I was introduced to him by Mr. Hanscome; Mr. Hanscome told him that he came there—he at first made some excuses for calling him out at that time, supposing his school was in session, and he came to settle up that matter about the lots; he was ready to give him a deed if he wanted to, which Mr. De Sollars said he didn't care to take as long as that receipt was on the property.

Q. What receipt?

A. He didn't say what receipt it was, just that receipt, and Mr. Hanscome said he had received some money from Judge Henry amounting to fifty dollars; he came to tender it to him; pulled the money out of his pocket and offered it to Mr. De Sollar, which, of course, he refused, and some language, saying, asking him
169 if that is the way he did business in Wichita, I believe it was, and Mr. Hanscome made some reply—that is the way he did business here; then Mr. Hanscome said, as he refused to take that, he tried to settle the matter as best he could and hereafter he would have nothing more to do with it; and Mr. De Sollar said that he had that receipt and he would file that and put a cloud on the title — which he or his heirs could not sell the property, and that he would make him suffer for it; also, Hanscome replied, if he did he would make him suffer for it and it would cost him something if he did. I believe he said, Good evening, and went out; that is all I remember of the conversation.

Cross-examination by Mr. PHELPS:

Q. You are the son-in-law of Mr. Hanscome?

A. Yes, sir.

Q. Where do you live?

A. In Denver. Do you want the street and number?

Q. No, sir; I don't care about that.

Q. Where have you been since the 26th day of December last?

A. I have been part of the time in Denver, and travelling a good deal over the East.

Q. How much of the time have you been in Denver?

A. I have been in Denver all the time excepting one month.

Q. What month was that?

A. The month of January.

Q. You gave your testimony in this case on the deposition taken before Judge Brazee on the 6th of December, did you not?

A. Yes, sir.

Q. In respect to this same matter?

A. I believe so; yes, sir.

Q. In that deposition you testified to nothing else except the one transaction you have testified to now?

A. That is all, I believe, I had anything to do with.

Q. You stated at that time the transaction, as you remembered it, did you?

A. Yes, sir; as fully as I remembered it then—all the questions asked me.

Q. You have never given your deposition but once in this case, have you, until to-day?

A. No, sir.

Q. You say it was about half past seven Hanscome and you went to De Sollar's place?

A. Somewhere about that time.

Q. It occurred outside the office-room or premises of Mr. De Sollar?

A. Yes, sir.

Q. How far from Mr. De Sollar's door on the outside of his office or school-room?

A. I should judge two feet and a half or three feet; hardly that. He might have been leaning up against the door jamb part of the time, possibly. Part of the time he stood away, I know.

Q. In your deposition you didn't state anything about this hall and the shutting of the door?

A. No questions were asked me.

Q. I asked you whether you stated it.

A. No, sir.

Q. The conversation was begun by Mr. Hanscome introducing you to Mr. De Sollar?

A. Yes, sir.

Q. Where had you and Mr. Hanscome gone from to make this visit?

A. I don't know as I understand your question.

Q. From what point had you and Mr. Hanscome gone?

A. The St. James hotel.

Q. Where had you met?

A. At the St. James hotel.

Q. How did you come to meet there?

A. Well, I was with Mr. Hanscome a good deal of the time. I went down there that evening, I suppose, as usual. I had an engagement with him. We were going out.

170 Q. You knew before you went down to Mr. De Sollar's what you were going for?

A. I don't know that I did. I knew after I got there.

Q. You were in complete ignorance of it until you got to Mr. De Sollar's room.

A. I don't remember anything said about it before.

Q. You did not know before that of any difference between De Sollars and Hanscome?

A. I knew there was some.

Q. Did you know there was a difference between them relating to these lots?

A. Yes, sir.

Q. Did you know that it grew out of a contract that had been made for the sale of them?

A. Yes, sir.

Q. You had talked it over with Mr. Hanscome prior to that?

A. He had told me something about the sale; yes, sir.

Q. When you got there, after the introduction, what was the first thing Mr. Hanscome said or did?

A. I believe he said he came to settle up the matter of those lots.

Q. Mr. Hanscome said so?

A. Yes, sir. If it could be done agreeably to both parties.

Q. He said he had come to settle up the matter if it could be done agreeably to both parties?

A. Yes, sir; and he also offered him his deed for the property if he would take it.

Q. In your deposition you did not state he had come to settle up the matter if it could be done agreeably to both parties. Did you say that?

A. I don't know that I did say that; no, sir.

Q. Did Hanscome upon that occasion tender Mr. De Sollar a deed to this property?

A. He said he would give him a deed; yes, sir.

Q. Did he tender him a deed to this property?

A. Why, yes, sir; he did. He said he came to tender him a deed.

Q. I asked you if he tendered him a deed to the property.

A. Yes, sir.

Q. You so testified in your deposition before Judge Brazee, did you not?

A. I believe so; yes, sir.

Q. Did you see the deed?

A. No, sir.

Q. You don't know what property was described in it?

A. I know the property in controversy.

Q. You don't know what property was described in the deed?

A. No, sir; I do not.

Q. You don't know what the consideration was?

A. I didn't see the deed; no, sir.

Q. Who did the most of the talk on that occasion?

A. I think it was equally divided between the two gentlemen. I think——

Q. What part in the conversation did you take?

A. Why, I didn't say anything, sir.

Q. Didn't say anything at all?

A. Perhaps I said good evening to him after the introduction. It was not necessary for me to say anything else.

Re-examined by Mr. BENTLEY:

Q. What do you mean when you say that Mr. Hanscome tendered a deed to Mr. De Sollar?

Mr. PHELPS: I forgot one question.

Q. Between the last of December last and the present time how many conversations have you had with Mr. Hanscome about this transaction?

A. Why, I have had a great many, sir.

171 Q. Were you here in court yesterday?

A. Very little of the time, sir. I was here when I was sent over.

Q. Were you here when Mr. Hanscome was testifying?

A. Part of the time.

Q. Have you seen him since?

A. Yes, sir; I saw him very little.

Q. Talked this matter over with him?

A. Well, very little; yes, sir.

By Mr. BENTLEY:

Q. What do you mean when you say to Mr. Phelps that Mr. Hanscome said he came to tender a deed or to tender a deed to Mr. De Sollar?

Obj'd to. Obj'n overruled.

A. Why, I mean that he came there to tell Mr. De Sollar that he would give him a deed for the property; that is the way I understood it.

Q. Did Mr. Hanscome have a deed with him?

A. That I don't know. He might have had it in his pocket. I could not say.

Q. Did he say to Mr. De Sollar that he had a deed?

A. I don't remember that, sir.

Q. You simply remember the conversation, you stated; that is all you mean by saying he tendered a deed?

A. Yes, sir.

Mr. PHELPS:

Q. In your testimony before Judge Brazee did you state that Mr. De Sollar told Mr. Hanscome that he would not take the title to that property while that receipt was on it?

A. It is so long ago I don't remember what was in that deposition.

Q. You don't remember whether you said that or not?

A. I don't remember the deposition; no, sir.

Here follows the testimony of Mr. Hanscome when he was recalled.

MONTE KILBOURNE sworn.

Direct examination by Mr. PHELPS:

Q. What is your name?
A. Monte Kilbourne.
Q. Where do you live?
A. Loveland, Colorado.
Q. Are you acquainted with Mr. De Sollar?
A. I am acquainted.
Q. Do you know the plaintiff, Mr. Hanscomb?
A. I know him when I see him, that is.
Q. How long have you been acquainted with Mr. De Sollar?
A. Since a year ago last November.
Q. Where were you and how were you engaged in March, 1888?
A. I was attending school at his place.
Q. Mr. De Sollar's commercial school?
A. Yes, sir.
Q. Do you remember of meeting Mr. Hanscome with Mr. De Sollar during that month?
A. I do.
Q. Whereabouts?
A. On the corner of 16th and Curtis street.
172 Q. Do you remember about what time in the month it was?
A. It was about the 18th of the month.
Q. How do you fix that date?
A. I fix that date by having to copy a paper that was drawn up on the 20th of March. I copied the paper on the 21st; compromise contract between the two, Mr. Hanscome and Mr. De Sollar. I know this meeting was two or three days previous to that copying of the contract.
Q. Now state what took place at that meeting on the corner of 16th and Curtis street- between De Sollar, Professor De Sollar, and Mr. Hanscome.
A. Professor De Sollar stopped Hanscome on the street and informed him he had talked with Chittenden. He was willing to remove that receipt if he would not, and he wanted him to make out the deed at once, as he was ready and had been for several days to pay the money.
Q. I wish you would state about that time of day it was you met.
A. Between the hours of four and five o'clock in the evening.
Q. What was the first thing said by the parties when you came together?
A. Mr. De Sollar told him he had concluded to remove the Chittenden receipt himself.
Q. What was the first thing?
A. The first thing I remember was hallowing at him by the name of Hanscome, stopping him as we were coming up behind him.
Q. Where did you come from?
A. We had come from the St. James hotel over to Judge Henry's

office; when we were there saw him coming up the street; coming up 17th, on the corner of Curtis.

Q. You had been looking for him?

A. Yes, sir.

Q. How long were they together there?

A. I should say four or five minutes.

Q. What did Mr. Hanscome say when he told him he was ready——

A. He told him he had left the matter in the hands of his attorney and the sale was off, and turned and left us.

Q. Did he say anything about giving back any money?

A. No, sir.

Q. Did he say anything about Mr. Henry or about what Mr. Henry had done?

A. No, sir.

Cross-examination by Mr. BENTLEY:

Q. How long had you been with De Sollar on that occasion?

A. I had been with him since nine o'clock of that day.

Q. Had you been along with De Sollar when he was hunting for Hanscome?

A. I had at the request of De Sollar.

Q. To hear what would be said?

A. Yes, sir; I believe that was the object.

WILLIAM H. MALONE sworn.

Direct examination by Mr. PHELPS:

Q. Are you acquainted with Prof. De Sollar, defendant here?

A. I am.

Q. Did you ever have occasion to examine some abstracts to property in block 36, Park Avenue addition to Denver, for him?

A. I did.

Q. Do you recognize those as the abstracts? (Handed papers.)

A. Yes, sir; I have seen those before.

Q. Did you examine by the records—that is, did you com-
173 pare the entries with the——

A. I did.

Q. Do you remember how long it was after you received the abstracts from Mr. De Sollar until you reported to him upon them?

Q. I don't remember that, Mr. Phelps.

Q. State whether or not you reported the same day you received them.

A. I think I reported very shortly afterwards; I am very sure of it.

Q. You can't fix the date on which you received them and the date on which you made the report?

A. I cannot now.

Q. Do you remember whether or not you examined them early in the day or in the afternoon?

A. I examined them in the morning.

Q. How early in the morning?

A. I usually go to the recorder's office very early in the morning; sometimes before the main door is open.

Q. These were left with you in the evening?

A. They were left with me in the evening.

Q. And you examined them the next morning?

A. Yes, sir.

Q. Did you subsequently have a conversation with Mr. Hanscome in regard to what you found upon the abstract?

A. I did.

Q. What was that conversation?

A. Mr. Hanscome with Mr. De Sollar came to my office. I stated I found, upon the examination of the title, a receipt filed there by some person claiming to have sold the property. I had so stated to Mr. De Sollar, that that was upon the records, and I suggested to Mr. Hanscome that it was his duty to have that removed in some way.

Q. Do you remember what Mr. Hanscome said in regard to it?

A. Well, Mr. Hanscome stated that the person who made that receipt had no authority. I said that that was a question of fact that would have to be decided in some proper way, and he declined to have it removed; said that Mr. De Sollar would have to remove it if he wanted it removed.

Q. Do you remember anything else?

A. I don't remember very many facts, except his manner at the time; that he was very indignant. He spoke of it as a blackmail. He was indignant at the fact it should be—a person should put it there; had no authority or right. That receipt purported to be signed by a man by the name of Chittenden in favor of the man——

Q. Signed by Dubbs in favor of Chittenden, perhaps.

A. Yes, sir. They were connected, I know, in the abstract in that way.

Q. Was there any further conversation?

A. Not that I remember at all.

Q. Did the parties go off together?

A. They started out, and I called Mr. De Sollar back.

Q. Do you know where this property is situated?

A. No, sir. I can't tell you by the street.

Q. Can't you tell by its proximity to the cable road or anything of that sort.

A. I don't remember now, Mr. Phelps; my best recollection of it is between 16th and 15th, Colfax avenue.

Q. Colfax and 16th, on Clarkson?

A. I am not positive about the cross-street there.

Q. That is, as to the name of it?

A. Yes, sir.

Q. Are you acquainted with the value of property in that locality?

A. Yes, sir. I think I have——

Q. Is the property more or less valuable there at the present time than it was in March, 1888?

Objected to. Objection overruled.

A. Oh, it is worth more money

Q. Worth more at the present time?

A. Yes, sir.

174 Q. About what per cent. more?

A. I think it is worth double.

Q. What would you say these lots were worth at the present time or in December last—both ways, please?

A. What they are worth now and what worth in the early part of last December and what now? Well, I should say they were worth now eighty-five hundred dollars.

Q. And how much the first of last December?

A. Oh, they would not vary very much from that.

Q. About the same.

F. D. MORSE sworn.

Direct examination by Mr. PHELPS:

Q. Are you acquainted with Mr. Hanscome?

A. I never saw him before until I saw him here.

Q. Are you acquainted with Colonel Bentley?

A. I have met the colonel.

Q. Are you acquainted with Mr. De Sollar?

A. Yes, sir.

Q. Did you go with Prof. De Sollar to Bentley's office on any occasion?

A. I did.

Q. About when was it?

A. Well, it was about the 23rd or 24th of March last, between about 4 and six in the afternoon.

Q. What transpired there?

A. After we went in, first Mr. De Sollar introduced me to Mr. Bentley, and Mr. De Sollar told Mr. Bentley that he had been trying to settle up that matter with Mr. Hanscome, and he had referred him to him, and he said that he was Mr. De Sollar's receipt; he was ready to comply with his part of the agreement and he wanted a deed. Mr. Bentley smiled rather sarcastically and said he had no deed for him. Mr. De Sollar repeated two or three times. Finally, he says, "I can't make you any deed;" something like that. That was about all that was said.

Q. If there was anything else said, state it fully.

A. There was not anything said except just in that line. Mr. De Sollar *had* it over two or three times.

Q. Did you go with Mr. De Sollar to any point after that?

A. We went and took a drink after that.

Q. Nothing else?

A. No, sir; I left.

Cross-examined by Mr. BENTLEY:

Q. Didn't Mr. De Sollar tell me on that occasion that he was going to record those papers?

A. I am not positive whether he did or not; my impression is that he did not.

Q. Wasn't there something said about the recording of those papers at that time?

A. I don't think there was.

Q. Didn't I tell him on that occasion that if he went and recorded those papers he would be sued for damage?

A. I don't think those papers were brought——

Q. Answer my question, please; didn't I tell him on that occasion if he went and recorded those papers he would be sued for damage?

A. I don't think you did, sir.

F. D. MORSE.

Subscribed and sworn to before me this 4th day of December, A. D. 1889.

JOHN W. WEBSTER, *Examiner.*

175 JUDSON P. ETHRIDGE sworn.

Direct examination by Mr. PHELPS:

Q. Where do you live?

A. In the city of Denver.

Q. How long have you lived here?

A. Two years.

Q. In what business are you engaged?

A. Real-estate business.

Q. How long have you been engaged in that business?

A. A year and a half.

Q. Have you ever seen or do you know the location of the property mentioned here on this trial in Park Avenue addition, on Clarkson between Colfax and 16th street?

A. Yes, sir.

Q. Are you acquainted with the value of property in that vicinity?

A. Yes, sir.

Q. Were you acquainted with the value of property in that vicinity in March, 1888?

A. Yes, sir.

Q. Is property more valuable now or less valuable than it was in March, 1888?

A. More valuable.

Q. About what per cent. more?

A. About 75 per cent; 75 to 80.

Q. What is its value now as compared with last December—the first of last December?

A. These three particular lots, you mean?

Q. Yes.

A. I think possibly the lots would be worth—the three lots——

Q. I mean just give me comparatively whether they are worth more now than last December.

A. I think they are some.
Q. Much?
A. Not a great deal.
Q. Is there any particular cause which operated to enhance the value of property in that locality subsequent to the third of March last?
A. Yes; I think there was.
Q. How far are these lots from the cable road?
A. About three-fourths of a block.
Q. Was the cable road running out there on the third of March last?
A. I believe it was.
Q. I don't mean last March, but a year ago.
A. A year ago; no, it was not.
Q. What effect did the fact that the cable road was to be built when that fact became assured, out Colfax avenue, have upon this property and other property in that locality?
A. It very materially increased its value.
Q. Do you know any other cause that would operate to increase values in that locality?
A. A large amount of building being done in that locality.
Q. A good deal of building?
A. Yes, sir.
Q. What, in your judgment, is the value of this property at the present time?
A. About eight thousand dollars.
Q. What was it worth, in your judgment, last December—the first of December, about the 7th?
A. A little over, perhaps.
Q. You say a little over?
A. Possibly; yes, sir.
Q. When was the first time you saw Mr. Hanscome?
A. It was in March, 1888.
Q. About what time?
A. Well, my recollection is it was shortly before the middle of the month.
Q. Where?
A. In my office.
Q. Did you have any conversation with him or hear any
176 conversation respecting the sale of this property that had been made to Mr. De Sollar?
A. I heard conversations.
Q. Who was the conversation with?
A. Between Mr. Henry and himself.
Q. Between Mr. Henry and Mr. Hanscome?
A. Yes, sir.
Q. What was said by Mr. Hanscome?
A. I did not know the gentleman at the time he came in, but shortly after he came in he produced an abstract or abstracts; I could not say which, his back was turned; he made a remark to the judge to the effect that here were the abstracts of the Clarkson-

street lots; handed them to the judge; laid them on the table—desk. The judge replied that he didn't have anything to do with the abstracts now—the abstract; he wanted to get them brought down and taken to Mr. De Sollar, and Mr. Hanscome carried them out of the office with him.

Q. He took them away?

A. Yes, sir.

Q. Do you remember any other conversation at the time?

A. I have a recollection of making a remark about having received some money—I believe that was the first he said—and not knowing anything about it at that time.

Q. About receiving a letter?

A. I can't say as to that. As quick as he mentioned the Clarkson-street lots I was interested then; then I listened to the conversation.

Q. You don't remember where he said he had received the money?

A. Before he left home; that is the recollection I have.

Q. What else did he say?

A. I don't think there was anything else said at that time; I think very shortly he took the abstracts and went out of the office.

Q. Do you remember about what time of day it was?

A. I do not; I would guess at it if I undertook to tell; my impression is it was in the forenoon some time; about ten o'clock; that is my impression of it.

Q. This gentleman you speak of, Mr. Henry, is that J. J. Henry, sometimes called Judge Henry?

A. Yes, sir; he and I shared the same office.

Q. I will ask you if you, subsequent to that time, ever heard conversation between Mr. De Sollar and Judge Henry respecting the closing up of this deal on Clarkson.

(Objected to.)

A. Yes, sir.

Q. State what that conversation was.

Objected to. Objection sustained.

Mr. PHELPS: There is enough now to show he was an agent to receive any propositions De Sollar had to make in regard to being ready to close it up. All I expect to show is going to Judge Henry and submitting to him that he was ready now to conclude this contract, and I think that there is enough here to show that Henry was certainly an agent to the event of making it his duty to communicate with Mr. Hanscome and conclude the transaction. Of course, it is a question for the jury to pass upon, but I think that there is testimony which tends to support it.

The COURT: The principal was here in the city himself; there was no reason for an agent at all at that time.

177 Cross-examination of Mr. ETHERIDGE.

By Mr. BENTLEY:

Q. Mr. Etheridge, had you ever seen Mr. Hanscome before the time you mentioned when he came in the office?

A. No, sir; not that I recollect of.

Q. I wish you would state what was the first thing you heard him say, and to whom he said it?

A. The first thing that I have any recollection of is a remark he made to Mr. Henry to the effect that he received some money just before leaving home; that is the first thing I have any recollection of.

Q. State what he said about it; I want the words of Mr. Hanscome as near as they can be repeated.

A. Whether he said I received your letter; I am unable to give it in his words.

Q. As nearly as you can.

A. I received your draft just before taking the train for Denver.

Q. That is as near his language as you can remember?

A. Yes, sir.

Q. What did Mr. Henry say?

A. Mr. Henry said in about these words that he was glad to see him; that they thought they could arrange the matter now while he was here; in substance.

Q. What did Mr. Hanscome say?

A. Mr. Hanscome produced the abstract or abstracts, I could not say whether there was one or two, and says, Here are the abstracts or abstract; and Mr. Henry in substance said that he would not have anything to do with the abstracts now. He took them and looked them over or looked the papers over and says to Mr. Hanscome, You want to take these to the abstract office and have them brought to date; take them to Mr. De Sollar; and Mr. Henry said something about his having made strenuous efforts to effect the sale on the terms Mr. Hanscome wanted, and Mr. Hanscome took the papers with him and departed.

Q. Did Mr. Henry tell Mr. Hanscome where he would find De Sollar?

A. I do not recollect.

Q. Did Mr. Henry show Mr. Hanscome the contract or any paper?

A. My recollection is that he did not, but Mr. Hanscome's back was turned to me and I could not see.

Q. How long was Mr. Hanscome there?

A. Not but a very short time.

Q. Did they shake hands?

A. I believe they did; yes, sir.

Q. Did Mr. Henry express any surprise at the appearance of Mr. Hanscome there?

A. I don't think he did; no, sir.

Q. Are you still officing with Mr. Henry?

A. No, sir.

Q. When did you leave there?
A. Judge Henry left the office before I did.
Q. He went out and left you there?
A. Yes, sir.
Q. When was that he went out?
A. I think it was some time in October or November last; I could not say positively.
Q. Now, what, if anything, fixes in your mind the language or the remark of Mr. Hanscome when he first came in the office?
A. Well, I never knew Mr. Hanscome at all, and when he appeared in the office I did not know who he was; Mr. Henry and I had talked the matter of this sale over and I understood that Mr. Hanscome was a resident of Wichita, and when he made the remark that he had received a communication from the Judge or his draft before leaving Wichita I immediately surmised he was Mr. Hanscome and pricked up my ears and remembered the remark.
178 Q. And that sort of struck your attention at the time?
A. Yes, sir.
Q. Now, are you sure that Mr. Hanscome said that he received it before he left Wichita?
A. I am quite positive of it.
Q. Did not Mr. Hanscome say I received your letter with the draft?
A. No; I am very sure he said before he left Wichita; otherwise I would not have paid much attention; would not have recognized who he was; that is what fixed that in my mind.
Q. That is all, unless you can state the date. Can't you state more particularly the day on which this took place?
A. I cannot.
Q. The day of the week?
A. No, sir; I cannot; I can fix the approximate time only.
Q. You only say of that it was shortly before the middle of the month?
A. Yes, sir.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

HERBERT DE SOLLAR, Complainant,
vs.
WILLIAM B. HANSCOME, Defendant. } In Equity.

It is hereby stipulated and agreed that the testimony of Mitchell Benedict, hereto attached, may be taken and read by the complainant in this action upon the hearing of this cause in the same manner and with a like effect as if the said testimony had been regularly taken in this cause in behalf of the complainant before the master in chancery.
That the defendant shall have the right to interpose such objec-

tions and exceptions thereto when used and produced before
179 the court as he may be advised, other than that said testimony was not regularly taken in this cause, the testimony attached being the testimony of Mitchell Benedict in the suit *of* law in the United States court, in which the defendant herein was the plaintiff and the complainant herein was the defendant, this being done as a matter of convenience between the attorneys because of the absence of the said Mitchell Benedict from the State of Colorado and because it is admitted that his testimony, if taken in this cause, would be the same as that which is hereto attached.

A. B. SEAMAN,
Attorney for Complainant.
J. A. BENTLEY,
Attorney for Defendant.

MITCHELL BENEDICT sworn.

Direct examination by Mr. PHELPS:

Q. You are an attorney of this city?
A. Yes, sir.
Q. Have lived here a good while?
A. 23 or 24 years.
Q. You are the head and front of Benedict and Phelps?
A. I am.
Q. Which includes myself?
A. It does.
Q. Are you acquainted with Mr. De Sollar?
A. I am.
Q. Do you remember when you first met him?
A. A year ago or more.
Q. Do you remember what brought him there?
A. He came in connection with the purchase of some lots
180 from a man by the — of Hanscome?
Q. How many times did you see him (several)?
A. Prior to the 24th of March, 1888—I could not say how many times I saw him prior to that time. I saw him several times about that time. If you could fix upon my mind anything done at that time perhaps I could tell you better.
Q. Did he consult you professionally?
A. He did.
Q. In what matter?
A. In regard to some lots situated on the hill. I don't recollect now the numbers and the addition. He had a contract for the purchase with Mr. Hanscome, signed by Mr. Henry; that is my recollection.
Q. I wish you would state to the jury, please, the case as Mr. De Sollar submitted it to you, and state to the jury what in the end what advice you gave in respect to it.
A. Mr. De Sollar showed me some papers signed by Judge Henry.
Q. Do you think if you would look at copies of those papers in the pleadings you would recognize them?
A. I think I would. I would not want to say they were the

same. He showed me at the time a contract which was signed by Mr. Henry——

(Mr. PHELPS: I have the originals here.)

Mr. BENEDICT (continuing): —in regard to the purchase of some property, and one time when he came in he brought me the authority for Mr. Henry to act, which, I believe, was in the form of letters, at the same time stating to me that (witness is handed paper and says, "Yes, sir; I recognize them") Mr. Hanscome would not perform his part of the contract.

Q. What did he state to you in regard to what Mr. Hanscome had done since he came into the State?

A. He stated he had been to see Mr. Hanscome and requested he should make him a deed to the property, and that Mr. Hans-
181 come had refused. I talked with him about going and seeing Mr. Hanscome in person, and was informed by Mr. De Sollar that Mr. Hanscome had employed Judge Bentley, and that he was the person for me to go to see, to whom everything was referred. I saw Mr. Bentley, and he informed me that he and Mr. Hanscome considered it fully and refused to make the deed.

Q. State whether in the conversation with Mr. De Sollar he stated to you that Mr. Hanscome had furnished him abstracts, and that he had acknowledged the receipt of part of the money, or anything of that sort.

A. He did; that these papers, the abstract of the property; also stated he paid, I think it was, $50 on account.

Q. Did he state he had paid that, or that Mr. Hanscome said he had received that?

A. I must confess I can't recollect.

Q. You don't remember what the papers stated; what was the amount paid?

A. I could not tell that without looking them over; it is now a year ago.

Q. You don't remember it as a matter of recollection? Go on and state what——

A. In my consultation with Mr. De Sollar and with yourself and myself—I also had them with Mr. De Sollar—if Mr. De Sollar was entitled to the possession of this property a court would compel him to make a deed; advised him after reflection and consideration to take and record not only the contract betwixt Mr. Henry, signed by Mr. Henry, but the letters showing the authority from Mr. Hanscome to Mr. Henry to make his contract. He acted upon my advice and went and placed it upon record.

Q. Did he explain to you—say anything to you about a supposed cloud or objection to the title on account of some receipt that had been given by Chittenden or Dubbs?

A. At first, when he came, I think he stated the abstracts
182 had been examined by another firm in town, and I consulted with him in regard to the receipt that was outstanding; I forget the name now; I could not tell without looking at the abstract; and I advised him to see the party in regard to it and gave him my opinions in regard to its validity. If I recollect right there

did not seem to be any authority for that receipt. Still I would not state as to that.

Q. You say you told De Sollar—you told him he was entitled to have the property under the contract?

A. Yes, sir; and that a court would compel a deed to be made in case he brought suit for specific performance.

Q. That was the reason why you advised him to put it on record?

A. Yes, sir; in order to compel him to bring suit.

Q. Not for the purpose of harrassing Mr. Hanscome?

A. No; that was not it; the matter of putting it upon record came from me entirely; we had conversation, I think, with you in regard to its propriety before doing so. He came in the next day or that afternoon; I have forgotten which. I repeated to him it was a more effective way of perfecting his right, and advised him to do it; whether he did it at that time I don't know; subsequently he informed me he *he* had.

Q. Do you remember whether in the discussion of the matter the question came up about there being upon the face of the papers any departure by Mr. Henry from his authority, any consideration of the question whether he had ratified?

A. Yes, sir; that was discussed; there was some question in regard to the length of the time. If I remember right, the paper was to be closed under the contract signed by Mr. Henry. I have not looked at them; I think about the 24th of March or the 25th. Some seven or eight days before I was informed by Mr. Henry the abstract was given by Hanscome to Henry to pass over to
183 De Sollar. Mr. De Sollar had it at the time of our conversation. I recollect advising him in regard to that, that it was a question as to the time.

Q. It was also communicated to you at the time, was it not, that Mr. Hanscome had received a part of the purchase price?

A. Yes, sir. I do not say it was communicated to me by Mr. De Sollar or Mr. Henry, but my impression is that Mr. De Sollar, I think, mentioned 50. Before going into this I took pains to send for Mr. Henry also, and got Mr. Henry's statement in regard to the contracts and statements he had with Hanscome in regard to the transaction before making up my mind, before advising him to place it upon record, to see whether or not there was any misunderstanding and Mr. De Sollar was right.

Q. By way of refreshing your recollection I will ask you if the contract there specifies that a certain sum had been paid, say $150 or $200. Was it not a fact that you were informed that part of that sum, to the extent of $50, had been sent to and received by Mr. Hanscome?

A. That is my impression at this time, and I don't want to speak in regard to that with certainty, but that is my impression. I can't say whether I got it from Mr. De Sollars or Mr. Henry or from Judge Bentley in my conversation with him.

Cross-examination by Mr. BENTLEY:

Q. I wish you would state what you understood about Hanscome raising some question as to whether the authority had been followed by Henry in making that contract.

A. I understood at the time and it is my understanding now that the time which Mr. Hanscome gave Mr. Henry to sell this property was less in time than was expressed by Mr. Henry in his contract with Mr. De Sollar, but that Mr. Henry informed Mr. Hanscome of the fact and that Mr. Hanscome had ratified it by turning
184 over to Mr. Henry the abstract of the property to give to Mr. De Sollar for examination. That is what I understood.

Q. That is good, Mr. Benedict, as far as it goes. What I am after is whether you understood that Hanscome himself at that very time, notwithstanding the ratification, if you please to call it a ratification, raised a question as to whether Henry had complied with the contract, whether there was objection being made by Hanscome.

A. I never heard that he had made any objection to that at all until my conversation with you. I think it was mentioned by you.

Q. When did you have that conversation with me?

A. It is pretty hard to determine; prior to the recording of these papers, I think, and on the street.

Q. Was that before or after you had given the opinion to *the* De Sollar?

A. I think I gave my opinion to De Sollar at once, but it was before the recording of the papers.

Q. But you had already had a talk with De Sollar about it?

A. Yes; I think probably the first time he talked with me I gave him my impressions about it; very apt to.

Q. You say I told you Hanscome objected on the ground that Henry had not complied with the authority?

A. I think that was your objection.

Q. Did you communicate that to De Sollar?

A. I don't recollect whether I did or not; I presume I did; I am pretty apt to state all that was said; also communicate to him the fact you and I discussed, the delivery of the abstract being a waiver of that part; also communicated to him that you and I had discussed the question of the delivery of the abstract.

Q. You didn't tell him that I said that that was a waiver?
185 A. No, sir.

Q. I said there was no waiver there?

A. No, you did not say there was any waiver; you said you would see about that. I think in that conversation you said that you regarded the act of Hanscome in furnishing the abstract as an affirmance of the transaction extending the time to the 25th, or whatever it was; affirming the contract which Henry had made. I think that is the way you put it; yes, sir; we had a talk about the $50, some money there was, keeping it and so on.

Q. And that was the basis of your advice to Mr. De Sollar?

A. I can't say it was the basis; one of the elements which entered

into it, I presume. The conversation which Mr. Henry stated to me in regard to the conversations that took place betwixt him and Hanscome may have had something to do with it; I presume it did.

Q. In giving your advice to Mr. De Sollar this question of dealing with the abstracts had been an important element?

A. That, together with the statements of Mr. Henry; I won't say which was the most controlling or most important other than Henry had a part of the money and was keeping it; I don't pretend to say which was the controlling element.

Q. Did Mr. De Sollar understand that his dealing with the abstracts was an element, and important element, of your advice?

A. I can't say; I don't know whether—I don't know which point we made was the one which controlled him or not; I don't know.

Q. But all these elements were talked over between you and De Sollar?

A. Yes, sir.

Redirect examination:

—. In your conversation with Col. Bentley you discussed the question of waiver by the delivery of the abstracts and the fact that Mr. Hanscome had received and kept a part of the money?

186 A. Kept part of the money; also the lots had gone up since and he didn't want to sell to him, which my friend Bentley denied, of course.

Q. And you think you reported to Mr. De Sollars?

A. Yes.

Q. Upon the whole your conclusion was that there was a good right under that contract?

A. That was my advice to Mr. De Sollar.

Q. Was that advice your candid and honest judgment at the time?

Objected to. Objection sustained.

Defendant rests.

(Endorsed:) No. 2437. Herbert S. De Sollar *vs.* William B. Hanscome. Testimony taken by John W. Webster, examiner. Filed Dec. 14, 1889. William A. Willard, clerk.

187 And afterwards and on, to wit, the 9th day of May, A. D. 1890, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his motion for rehearing of the issues herein joined.

And the said motion is in words and figures as follows, to wit:

Motion for Rehearing.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States for the 8th Judicial Circuit within and for said District.

HERBERT S. DE SOLLAR, Plaintiff, *vs.* WILLIAM B. HANSCOME, Defendant. } In Equity. No. 2437.

And now comes the said complainant, Herbert S. De Sollar, by A. C. Phelps, Esq., his solicitor, and moves the court here for a rehearing in said cause and that the findings heretofore made may be set aside, and for cause for this motion respectfully showeth to the court here that according to the decision and finding of the court herein the material matter upon which the finding is made in favor of the defendant is based upon the alleged fact that on or about the 21st day of March, A. D. 1888, and near the time when the cash payment for the property was being made, the defendant proceeded to the plaintiff's place of business and offered to make a deed for the premises and offered to give him back the fifty dollars ($50.00) that he had received, and that this offer the complainant refused; and the plaintiff respectfully submits here to the court that this fact, which according to the finding is the turning point in the cause, does not appear from the testimony taken in
188 said cause and no testimony in said cause taken to support the said proposition, except the testimony of the defendant Hanscome and his son-in-law, neither of whom testified that a deed was tendered, but only that the defendant was *was* willing to make such a deed, and that said conversation took place at night, after business hours, and when it was impossible to close the transaction.

And further the complainant showeth here that the said testimony of said Hanscome and his son-in-law was emphatically and clearly contradicted by the defendant himself and by the witness Goldburg, who had no interest whatever in the controversy, and both the said complainant and the said witness, Goldburg, testified positively that in the said conversation the complainant told the defendant he was ready and willing to fulfil and anxious to do so, as he had theretofore been.

And the complainant further showeth to the court in support of this his application that this testimony of himself and witness Goldburg is also supported by the testimony of witness Kilburn, who testified that a few days prior to the 21st of March aforesaid he accompanied the complainant and was present at an interview in which the complainant told the defendant that he, the plaintiff, had himself satisfactorily arranged the matter of the Dubbs receipt and would take the property without insisting upon its being removed by the defendant, which fact is also testified to by complainant in this cause and is not contradicted by the defendant, and this testi-

mony is also supported by the fact testified to by the complainant that he, the complainant, had in fact arranged for the satisfaction of the Dubbs matter.

Wherefore this complainant submits that the finding herein that the complainant on the 21st day of March was offered a deed which he refused to take, and the further finding that it was subse-
189 quent to this when the complainant sought out the defendant and offered to take the property, asking no action on defendant's part in respect to the Dubbs paper, are both erroneous.

Wherefore he respectfully prays for a rehearing of the said cause with reference to the examination of the testimony on the two points above suggested.

A. C. PHELPS,
Complainant's Solicitor.

(Indorsed:) No. 2437. In the circuit court of the United States for the 8th judicial circuit within and for said district. In equity. Herbert S. De Sollar, plaintiff, *vs.* William B. Hanscome, defendant. Motion for rehearing. Filed May 9, 1890. William A. Willard, clerk. A. C. Phelps, solicitor for plaintiff.

And afterwards and on, to wit, the 25th day of July, A. D. 1890, the same being one of the regular juridical days of the May term, A. D. 1890, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Final Decree.

HERBERT S. DE SOLLAR *vs.* WILLIAM B. HANSCOME. } 2437. In Chancery. Bill for Specific Performance and for Other Relief.

This cause coming regularly on to be heard upon the bill of complainant and the answer and replication, and upon defendant's cross-bill and the answer thereto and replication and the proofs of the respective parties, and having been argued by counsel and duly submitted, and the court, being duly advised in the premises, doth order, adjudge, and decree that complainant's bill of complaint be, and the same is hereby, dismissed with costs to be taxed against the complainant.

190 And upon the cross-bill, answer, and replication and proofs the court doth adjudge and decree that the agreement dated March 3, 1888, set out in the cross-bill be, and the same is hereby, cancelled, and that said agreement and the record thereof shall not from henceforth have effect or operate as a cloud upon the title to lots four (4), five (5), and six (6), in block number thirty-six (36), in Park Avenue addition to Denver.

And it is further ordered, adjudged, and decreed that the complainant in the cross-bill, William B. Hanscome, deposit in the registry of the court, to be paid over to the complainant in the original

bill, the sum of fifty dollars, moneys of the said De Sollar heretofore received by said William B. Hanscome.

And it is further ordered, adjudged, and decreed that the said William B. Hanscome have and recover of and from the said Herbert S. De Sollar, complainant in the original bill, his costs of this suit laid out and expended, to be taxed.

And afterwards and on, to wit, the 23rd day of September, A. D. 1890, came again the said complainant, by Messrs. Ross & Deweese, his solicitors, and filed in said court and in said cause his bond on appeal and sued out of said court a writ of citation to the Supreme Court of the United States.

And the said bond is in words and figures as follows, to wit:

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents that I, Herbert S. De Sollar, of Denver, Colorado, as principal, and —— ——, as surety, are held and firmly bound unto William B. Hanscomb in the full and just sum of five hundred dollars, to be paid to the said William
191 B. Hanscomb; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23d day of September, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at the — term, A. D. 1890, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between Herbert S. De Sollar, plaintiff, and William B. Hanscomb, defendant, judgment was rendered against the said Herbert S. De Sollar, and said plaintiff having prayed and been allowed an appeal from said decree to the Supreme Court of the United States, and a citation directed to the said William B. Hanscomb, citing and admonishing — to be and appear at a term of the Supreme Court of the United States to be held at Washington on the 13th day of October next:

Now, the condition of the above obligation is such that if the said Herbert S. De Sollar shall prosecute said appeal to effect and answer all damages and costs if he fails to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

HERBERT S. DE SOLLAR. [SEAL.]
FRANK S. SNELL. [SEAL.]

Approved Sept. 23, '90.

MOSES HALLETT, *Judge.*

Justification.

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss.*:

Frank S. Snell and —— ——, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in

192 real & personal — the sum below set opposite his name— that is to say, *as to* five hundred ($500.00) dollars—over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

FRANK S. SNELL.

Subscribed and sworn to before me, at Denver, this 23d day of Sept., A. D. 1890.

[SEAL.] JOHN B. FLANNERY,
Notary Public.

My commission expires Nov. 26, '91,

(Indorsed:) Gen. No. 2437. Circuit court of the United States, district of Colorado. Herbert S. De Sollar *vs.* William B. Hanscomb. Bond on appeal, $500.00. Filed this 23d day of Sept., A. D. 1890. William A. Willard, clerk, by F. W. Tupper, deputy clerk.

And the said citation and acceptance of service *is* hereto annexed.

Citation and Acceptance of Service.

193 Citation, U. S. — Court.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to William B. Hanscomb, appellee, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington on the 13th day of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein Herbert S. De Sollar is plaintiff and appellant and William B. Hanscomb is defendant and appellee, and you are to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 23 day of September, in the year of our Lord one thousand eight hundred and ninety.

MOSES HALLETT, *Judge.*

[Endorsed:] Gen. No, 2437. Circuit court of the United
194 States, district of Colorado. Herbert S. De Sollar, appellant, *vs.* William B. Hanscomb, appellee. Citation. Filed in circuit court of the U. S. this 24 day of Sept., A. D. 1890. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Jno. J. Deweese, attorney for plaintiff in error.

Proof of Service.

Service of a copy of the within citation is hereby admitted this 23rd day of September, 1890.

J. A. BENTLEY,
Attorney for said William B. Hanscome.

195 And afterwards and on, to wit, the 24th day of September, A. D. 1890, came the said complainant, by his solicitor aforesaid, and filed in said court and in said cause and affidavit as to the value of the property in controveray herein.

And the said affidavit is in words and figures as follows, to wit:

Affidavit as to Value.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Eighth Circuit.

HERBERT S. DE SOLLAR, Plaintiff,
vs.
WILLIAM B. HANSCOMB, Defendant. } Equity.

STATE OF COLORADO:

Herbert S. De Sollar, being first duly sworn, deposes and says: I am the plaintiff herein; that I am well acquainted with the value of the property in litigation in this action, and that said property is of more than five thousand ($5,000.00) dollars of value; that I make this affidavit for the purpose of perfecting an appeal to the Supreme Court of the United States.

HERBERT S. DE SOLLAR, *Plaintiff.*

Subscribed and sworn to before me this 23d September, A. D. 1890.

[SEAL.] WILLIAM A. WILLARD,
Clerk District Court U. S.,
By F. W. TUPPER, *Deputy Clerk.*

(Indorsed:) No. 2437. Circuit court United States. Herbert S. De Sollar *vs.* William B. Hanscomb. Affidavit as to value of property. Filed Sep. 24, 1890. William A. Willard, clerk. John I. Deweese, att'y for pl'ff.

196 UNITED STATES OF AMERICA, } *ss.*:
District of Colorado,

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed and had and entered of record in said court and in said cause lately in said court pending, wherein Herbert S. De Sollar was complain-

ant and William B. Hanscome was defendant, as fully and completely as the same still remains on file or of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 30th day of October, A. D. 1890.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

197 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Colorado, Greeting:

[Seal of the Supreme Court of the United States.]

Whereas in a certain suit in said circuit court between Herbert S. De Sollar, complainant, and William B. Hanscomb, defendant, which suit was removed to the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"That a full, true, and complete transcript of the deposition of Henry K. Goldberg, mentioned and described in a certain stipulation between the parties to this cause filed in said circuit court of the United States on the 14th day of December, A. D. 1889, and pursuant to said stipulation introduced and read as evidence upon the hearing of this cause in said circuit court, the same being numbered 2437 on the equity docket of said circuit court," is omitted from the transcript:

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

198 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventeenth day of October, A. D. 1893.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

199 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 14th day of December, A. D. 1889, came Mr. John W. Webster, an examiner in chancery of said court, and filed in said court and in a certain cause in said court then pending, wherein Herbert S. De Sollar was complainant and William B. Hanscome was respondent, his report of the testimony taken before him in said cause.

And attached to and made a part of said report was a certain stipulation as to evidence to be introduced.

And the said stipulation is in words and figures as follows, to wit:

EXHIBITS A, B, C, D, E, & F, INTRODUCED IN EVIDENCE FOR COMPLAINANT AS EXHIBIT II. John W. Webster, Examiner.

In the Circuit Court of the United States, District of Colorado.

HERBERT S. DE SOLLAR, Complainant,
vs.
WILLIAM B. HANSCOME, Defendant. } In Equity. No. 3427.

It is hereby stipulated and agreed that the annexed ex-
200 hibits, marked A, B, and C, are true copies of the complaint, answer, and reply respectively in the case of William B. Hanscome *vs.* Herbert S. De Sollar, No. 2367 on the law docket of this court, and tried to a jury in said court on the 10th day of May, 1889, and that the annexed exhibits, marked D and E, are true copies of the verdict of the jury and of the judgment entered thereupon in this court in the said action at law on the 10th day of May, 1889, and that the annexed exhibit, marked F, is a true copy of the charge of the judge before whom the case was tried to the jury at said trial.

And it is further stipulated and agreed that said exhibits respectively may be used by either party upon the trial and hearing of this cause without further or other exemplification or proof thereof, and, for the purposes of this cause, shall stand in all respects as and for the originals and subject to all objections which might be made to such originals.

It is further stipulated and agreed that the deposition of Henry K. Goldberg, taken and read in behalf of the defendant in the aforesaid suit at law, may be used by the complainant upon the hearing of this cause in the same manner and with the like effect as if the said deposition had been regularly taken in this cause in behalf of the complainant, but the defendant shall have the right to interpose such objections and exceptions thereto when used and offered as he may be advised, other than that said deposition was not
201 regularly taken in this cause.

It is further stipulated and agreed that the said Herbert S. De Sollar shall proceed to take his testimony-in-chief, which he desires to take before the examiner in support of his bill and complete the same by or before the 4th day of December, A. D. 1889; that the said William B. Hanscome shall have thereafter until December 16th, 1889, to take his testimony in answer and also in support of his cross-bill, and thereafter the said complainant shall have five days to take his testimony in rebuttal and in answer to the testimony in support of the cross-bill, and said defendant shall have thereafter until December 24th, 1889, to take his testimony in rebuttal of complainant's testimony in support of his answer to the cross-bill.

It is further stipulated and agreed that William B. Hanscome,

plaintiff, and F. W. Herbert, a witness for him, and Herbert S. De Sollar, defendant, and Judson P. Ethridge, Monti Kilburn, and Henry K. Goldburg, who testified for said defendant, are the only witnesses who were sworn or testified in said cause No. 23067 on the law docket of said court as aforesaid as to any matter in controversy in said cause, save and except one E. W. Merritt and M. Benedict, who testified only to some matters bearing simply upon the question of damages. If the complainant in this cause shall elect to offer herein, as bearing upon the question of what was tried in the said cause on said law docket, the evidence of the five
202 witnesses first above named he may use the extension of the stenographer's notes as to the first four of them (which extension of the stenographer's notes is hereunto annexed and marked "Ex. G") and the deposition of the other without being obliged to prove the correctness thereof as being the testimony in fact given on the said trial of said cause on said law docket and subject to all objections which the said William B. Hanscome may desire to interpose, except as to the matter of the proof of said evidence hereby agreed to.

BENEDICT & PHELPS,
For Compl't.
J. A. BENTLEY, *For Def't.*

* * * * * * *

(Indorsed:) No. 2437. Herbert S. De Sollar *vs.* William B. Hanscome. Testimony taken by John W. Webster, examiner. Filed Dec. 14, 1889. William A. Willard, clerk.

And the said deposition of Henry K. Goldberg, referred to in said stipulation, is in words and figures as follows, to wit:

Caption.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

Be it remembered that on the 15th day of January, in the year of our Lord one thousand eight hundred and eighty-nine, in pursuance of consent, the parties to the cause herein mentioned
203 appeared before me, Andrew W. Brazee, commissioner of the circuit court of the United States for the district of Colorado, at the office of J. A. Bently, in Denver, Colorado, to wit: The complainant in said cause by J. A. Bently, Esqr., his attorney, and the defendant by A. C. Phelps, Esqr., one of his attorneys, and in person also.

And on this day came before me also Henry K. Goldberg, of the apparent age of 21 years, to testify and the truth to say as witness on the part and behalf of the defendant in a certain suit or matter of controversy pending and undetermined in the circuit court of the United States for the district of Colorado, at Denver, in said district, wherein

William B. Hanscome is complainant and Herbert S. De Sollar is defendant.

And the said witness, having by me been first duly cautioned and sworn according to law respectively to testify the truth, the whole truth, and nothing but the truth in the suit and matter of controversy aforesaid, was examined before me on oral interrogatories propounded to him by counsel, as in his deposition following appears—that is to say:

In the United States Circuit Court for the District of Colorado.

WILLIAM B. HANSCOME
vs.
HERBERT S. DE SOLLAR.

JANUARY 15TH, 1889.

204 Plaintiff appeared by J. A. Bentley, Esq., his attorney, and the defendant by A. C. Phelps, Esq., his attorney; whereupon the following proceedings were had by mutual consent:

The deposition of HENRY K. GOLDBERG, a witness produced on behalf of the defendant, who, being duly sworn according to law and orally interrogated, testified as follows:

Question by Mr. PHELPS. What is your name, age, place of residence, and occupation?

Answer. Henry K. Goldberg; 21 years; 2534 Stout street, Denver, Colorado; salesman for wholesale liquor store.

Q. Are you acquainted with Mr. Hanscome, the plaintiff in this case?

A. I know him by sight, but have never been introduced to him.

Q. Do you know Prof. De Sollar, the defendant?

A. I do.

Q. Were you in Denver on the 21st day of March last?

A. I was.

Q. Where were you between 7 and 8 o'clock of that day in the evening?

A. I was at the Central Business College, H. S. De Sollar's place of business. It was in the Tabor Opera House block, corner 16th and Curtis.

Q. Are you acquainted with F. W. Herbert?

A. I am not.

Q. Do you remember a call being made by Mr. Hanscome and some other person on the evening of the 21st of March last at the office of Prof. De Sollar, and a conversation taking place on the occasion between Hanscome and De Sollar?

A. I do.

205 Q. Describe with some particularity where you were and where the other parties were during the conversation, first giving, as near as you can, the time the conversation took place.

A. As near as I remember, it was between 7 and 8 o'clock in the evening. Mr. De Sollar and Mr. Hanscome and the other gentle-

men—Herbert—were in the vestibule hall of the college. I was sitting in my seat, assigned to me by Prof. De Sollar, right at the door.

Q. How far were you distant from where the others stood?

A. About 2 or 3 feet. You couldn't open or shut the door without moving my chair.

Q. Was the door partly open?

A. It was.

Q. State now what was said by the parties during the conversation.

A. Mr. Hanscome said to De Sollar, Here is $50, and I want you to give up certain receipts or letters that he, De Sollar, held in his possession, and Mr. Hanscome said that the sale was off, and De Sollar said, You must take me for a darn fool, and De Sollar said, I want you to comply with your part of the contract, as I am ready and have been for some time to comply with my part of the contract. Hanscome said no, that the sale was off. He said that he was going away in a few days.

Q. State whether or not there was anything said by Hanscome about the tender of a deed to Mr. De Sollar for the property.

A. No, sir; I didn't hear anything like that.

206 Q. What, if anything, did De Sollar say about accepting or not accepting the $50.00?

A. He said he wouldn't accept it, but he was ready to comply with his part of the contract and he had been for some time, and he wanted Hanscome to do the same.

Q. Did Mr. De Sollar tell Hanscome that he would put a cloud on the title so that he nor none of his heirs could sell the land, or anything to that effect?

A. I did not hear him

Q. Did you hear Mr. De Sollar say anything to Hanscome in regard to recording the papers which he had; and, if so, the reason why he should record them, or anything like that?

A. I don't remember of anything now. There might have been something at the time, but I don't remember it now.

Q. Do you remember him saying that if he, Hanscome, refused to comply with this contract he, De Sollar, would be obliged to protect himself by putting the papers on record?

A. Yes, sir.

Q. Were you occupying the same relative position to the parties during all the conversation?

A. I was.

Q. How did you happen to be occupying that position?

A. It was my regular seat.

Q. When the parties separated where did they go, or, particularly, where did Mr. De Sollar go?

A. Mr. De Sollar came into the room; the others went away.

Cross-examination by Mr. BENTLEY:

207 Q. What were you engaged in at *at* the time you were testifying about?

A. I was engaged in book-keeping—learning how to keep books.
Q. Did you stop your occupation to hear this conversation?
A. I did not, sir.
Q. You kept right on with your book-keeping work?
A. Yes, sir; I wasn't doing anything but copying.
Q. When Mr. De Sollar returned to the room did he caution or remind you to bear the conversation in memory?
A. Yes, sir.
Q. Have you since that time talked this matter over with Mr. De Sollar?
A. I have.
Q. About how many minutes was that conversation going on?
A. I don't remember now, but between 5 and 15; not more than 15 minutes.
Q. Did you hear anybody speak except De Sollar and Hanscome?
A. I did not, sir.
Q. Did you see any of the parties while the conversation was going on?
A. I did.
Q. Who?
A. Mr. De Sollar.

Redirect examination:

Q. How were you aware of other persons present besides Mr. De Sollar?
A. Because Mr. Hanscome came to the door where I was sitting and I saw Mr. Herbert at the first door, and I called Prof. De Sollar down. He was at his desk.
208 Q. How did you come to call him?
A. Because I knew that — any one came to the door if they wanted to see any one they would ask for the professor first, and I had always been in the habit of calling him.
Q. State just how Mr. De Sollar cautioned you about the conversation and just how he came to do it.
A. After Mr. Hanscome left Mr. De Sollar came back into the room and I said to him that you people were excited out there, and he asked me what I heard and I wrote it down on paper and gave it to him. He said he wanted it because he might need me as a witness some time.

Recross-examination:

Q. Do you know where that paper is now?
A. I gave it to Prof. De Sollar.
Q. When did you see it last and where?
A. I saw it about two weeks ago in Prof. De Sollar's possession.

HENRY K. GOLDBERG.

Subscribed and sworn to before me this 15th day of January, 1889.

ANDREW W. BRAZEE,
U. S. Circuit Court Commissioner.

It is stipulated that the typewritten deposition of this witness may be returned with the same force and effect as if written down by the commissioner, and the witness is about to depart for Salt Lake to go into business there and permanently reside there.

209 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Andrew W. Brazee, duly appointed a commissioner by the circuit court of the United States for the district of Colorado, do hereby certify that on the day mentioned in the proceedings and deposition annexed I was attended by the counsel and witness aforesaid, at the office of J. A. Bentley, 16th & Welton streets, Denver, Colorado; that said witness, to wit, Henry K. Goldberg, was first duly sworn by me, according to law, as witness in the suit or cause in the caption hereto mentioned and there examined before me orally by counsel, and by consent of the parties, by their several said att'ys, the examination and deposition of said witness was typewritten; that such examination was had in the presence of the att'ys of the several parties hereto; that said deposition after being completed and typewritten was read over by me to the witness deposing the same in the presence of the counsel of the respective parties or such of them as chose to attend; that the reason for the taking of the testimony of said Henry K. Goldberg *de bene esse* at this time was and is that said Goldberg is about to depart from the State of Colorado and to go to Salt Lake, in the Territory of Utah, there to permanently abide, more than one hundred miles from the place where said action is expected to be tried, to wit,
Denver, in the State of Colorado, where said cause is pending
210 and undetermined, as by reference to the stipulation at the end of said deposition will more fully appear.

That after said deposition had been read over to the witness making and deposing to the same and corrected by him, as appears opposite my initials "A. W. B." in the margin thereof, said deposition was signed and sworn to before me by said witness so making and signing the same.

I further certify that the foregoing is a true statement of all proceedings had before me in the matter of taking testimony herein at this time and no subpœnas for witnesses herein were returned before me.

Dated January 15th, 1889.

ANDREW W. BRAZEE,
U. S. Circuit Court Commissioner.

Witness Fees.

Henry K. Goldberg, attended 1 day	$1 50
Commissioner's fees, 1 day @	3 00
19 folios, @ 20	3 80
2 oaths, @ 10	20
Paid by defendant	$7 00

(Indorsed:) No. 2361. In the circuit court of U. S., dist. of Colorado, at Denver. William B. Hanscome *vs.* Herbert S. De Sollar. Dep. of Henry K. Goldberg on part of defendant. Opened, published, and filed May 8, 1889. William A. Willard, clerk.

211 UNITED STATES OF AMERICA, } *District of Colorado,* } *ss:*

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be true, perfect, and complete transcripts and copies of a certain stipulation attached to and made a part of the examiner's report of testimony in a certain cause in said court lately pending, wherein Herbert S. De Sollar was complainant and William B. Hanscome was respondent, and also of a certain deposition of Henry K. Goldberg, heretofore filed in said court and in a certain cause in said court lately pending, wherein William B. Hanscome was plaintiff and Herbert S. De Sollar was defendant, as fully as the same and each of them now remains on file in my office at Denver.

Seal United States Circuit Court, District of Colorado.

In testimony to the above and foregoing I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this seventh day of July, A. D. 1893.

ROBERT BAILEY, *Clerk.*

212 [Endorsed:] Case No. 14,862. Supreme Court U. S., October term, 1893. Term No., 630. Herbert S. De Sollar, appellant, *vs.* Wm. B. Hanscomb. Writ of certiorari and return. Filed Oct. 17, 1893.

Endorsed on cover: Case No. 14,862. Colorado C. C. U. S. No. 630. Herbert S. De Sollar, appellant, *vs.* William B. Hanscomb. Filed September 26, 1891.

HERBERT S. DeSOLLA,

Appellant,

v.

WILLIAM B. HANSCOME,

Appellee.

BRIEF FOR APPELLANT

CHAPIN BROWN,
ARTHUR M. O'CONNOR,
Attorneys for Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

HERBERT S. DESOLLAR,
APPELLANT,
v.
WILLIAM B. HANSCOME,
APPELLEE.

No. 303

STATEMENT OF THE CASE.

To readily understand the situation of the parties when appellant filed below his bill for specific performance, the following statement of facts will be found more convenient than the record.

Appellant, DeSollar, entered into a written agreement on the 3d day of March, 1888, with John J. Henry, acting as agent for appellee, Hanscome, of which specific performance is sought.

The sum of two hundred dollars was paid at the signing of the agreement, and by its terms $2,300 was to be paid on or before the evening of the 24th of March, the same month, when a good and sufficient deed was to be given to DeSollar from Hanscome and all papers were then to be dated and executed. Notes for one and two

years, secured by deed of trust on the propery, for two deferred payments of $1,250 each were to be given by DeSollar.

This agreement was afterwards ratified by the principal, Hanscome, but before the expiration of the time in which the further sum of $2,300 was to be paid and the conveyance and other papers were to be executed (March 24th) DeSollar had offered to complete the agreement and Hanscome had refused and had left the State of Colorado.

DeSollar then, on the 24th or 25th of March, 1888, to protect his interest under the agreement, caused the same to be recorded.

A short time afterwards Hanscome brought suit at law against DeSollar to recover damages suffered from the recording of that agreement. This suit was concluded by a verdict and judgment for defendant, DeSollar, on May 10, 1889. On June 6, 1889, this appellant filed his bill for specific performance of the agreement, which agreement is as follows :

"DENVER, COLORADO, *March* 3, 1888.

"Know all men by these presents that I, John J. Henry, acting as agent for Wm. B. Hanscome, of Wichita, Kansas, have agreed to sell to H. S. DeSollar, of the city of Denver, and State of Colorado, the three lots owned by the said Wm. B. Hanscome, situated on Clarkson street, between 16th and 15th avenues ; 15th avenue is known as Colfax avenue ; block, numbers of lots not known, but they are believed to begin the 4th lot from the corner of 15th street, and are on the west side of Clarkson street, fronting east. The lots are each 25 feet in Clarkson street, running back to an alley, and are 145 feet in depth. Said DeSollar is to pay five thousand dollars ($5,000), for the lots above described, payments as follows, to wit : Two hundred dollars ($200) in cash this day, the receipt whereof is hereby acknowledged, and twenty-three hundred dollars ($2,300) on or before the evening of the 24th day of the

present month of March ; the remaining sum of the purchase-money, $2,500, one-half, or $1,250, are to be due and payable on or before one year from the date of deed, and the other half, $1,250, in two years, on or before, from date of deed, each sum bearing interest at the rate of eight (8) per cent. per annum, interest payable semi-annually ; payment on these deferred amounts to be secured by notes and deed of trust on the property now bargained for. It is understood that a good, sufficient, and satisfactory deed is to be made by the said Wm. B. Hanscome for the said described property on or before the 24th day of the present month, of March, at which time the papers are all to be dated and executed. It is also further understood that the property conveyed is to be clean and clear of all incumbrance. And it is further understood that if the said H. S. DeSollar is or should be in default in meeting the second payment herein provided for, then the $200 paid this day shall be forfeited.

"JNO. J. HENRY.
"H. S. DESOLLAR."

SPECIFICATIONS OF ERROR.

The court below erred :

In finding of fact—

1. That the agent of appellee was not authorized to make the contract with appellant.

2. That appellee tendered a deed to appellant or otherwise offered to perform his contract.

In holding—

1. That following facts are not *res judicata :*

(*a*) That appellant was ready, able, and willing to perform the contract.

(*b*) That before the time appellant was required to perform, appellee had refused to perform.

(*c*) That the contract now sought by appellant to be enforced was, on the 24th day of March, 1888, valid and subsisting between appellant and appellee.

2. That a refusal by appellant to accept a deed on the 21st of March, when the contract stipulated that the money should be paid and the deed given not until the 24th day of March, and to be dated and executed on that day, would release the appellee from his contract.

BRIEF.

The question of the ratification of the foregoing agreement by the defendant herein is *res judicata*. It was directly in issue in the case of William B. Hansome *v.* Herbert S. DeSollar, No. 2367 on the law docket of the United States circuit court for the district of Colorado, in which case the appellant, DeSollar, was sued by the appellee, Hanscome, for damages for putting the said agreement on record in the county of Arapahoe, State of Colorado, where the land in question is situated (see Hanscome's complaint as filed in that case, page 76 of the printed record). This complainant, DeSollar, says in his answer to Hanscome's complaint in the said case (at law) "that shortly thereafter" (meaning and referring to the date of the said agreement) "the said plaintiff, after being fully apprised and personally informed of all that the said Henry had done, as his agent aforesaid, in the making and executing of the agreement aforesaid, with this defendant as aforesaid, fully approved, ratified, and confirmed the same, and continued so to do until shortly prior to said 24th day of March, 1888, when this defendant" (meaning DeSollar, the appellant herein), "being ready and willing to comply with the said agreement on his part, and to take and receive a deed of the said property from the said plaintiff and pay for the same according to the agreement aforesaid, he, the said plaintiff, unlawfully and without cause, refused to comply with, keep or perform the said

agreement on his part" (printed record, pages 81 and 82). Hanscome, in reply to the said answer, said that he "denies that shortly after the making of the said agreement, or ever, he, plaintiff, ratified and confirmed the same, and denies that shortly prior to March 24, 1888, or ever, the defendant was ready and willing to comply with the said agreement and to take and receive a deed for the said lot from the plaintiff and pay for the same according to the terms of the said agreement, and denies that the plaintiff unlawfully and without cause refused to comply with the said agreement" (record, page 82).

Testimony was taken upon this question in that case (see testimony of Hanscome, record, pages 89 to 122, and DeSollar's testimony, pages 122 to 131, and testimony of other witnesses on both sides). After the taking of the testimony, the judge presiding charged the jury, amongst other things, as follows: "The chief question for your consideration, therefore, is whether the plaintiff (Hanscome), by his conduct and what he did when he came to know what had been done in his name, ratified and confirmed this agreement" (printed record, page 83).

That DeSollar was ready and willing to complete the contract before and at the expiration of the stipulated time (March 24, 1888), and that Hanscome, after ratifying the agreement, refused, before and about the expiration of such time, to complete the same, are also *res judicata*. The pleadings above quoted put it directly in issue, and the charge of the judge presiding at the trial said that it was the main question. Upon this the judge said: "It stands mainly as a question between these parties, as to which is right in respect to the negotiations which took place between them after the plaintiff arrived in Denver and up to the 23d of the month. If the plaintiff is right in his account of it, and, in all negotiations which he then

had, he was insisting upon immediate payment of this one-half and expecting it to come out in that way, and this was not done by the defendant, they were in effect proceeding upon some new negotiations with reference to the matter, and not upon the old understanding and agreement. If the defendant is right in what he has said about it, the matter of the delay in time was unimportant; he was ready to complete the contract whenever the matter of the title should be adjusted; to accept the deed and pay the money at any time; and if that was the understanding, and finally the plaintiff went off without completing the contract, of course that would affirm it in such sense that the defendant might insist upon it, and in that view his putting it upon the record was entirely regular and proper" (printed record, page 84).

Under this view of the case there is no defence to this bill for specific performance. The court below, however, considered the questions of fact as still open. This is shown by the oral opinion delivered by Judge Hallett, in which he says:

"He could not, as he did insist upon performance of the contract, and that defendant should first cause the receipt to be cancelled. In other words, upon a sale of real estate the purchaser must take the title which the vendor has as it is, whether good or bad, or he must decline to take it. He cannot, when it comes to the point of accepting the property, say that he will insist upon his contract and require of the seller that he shall do something to make the title good. So in this instance, when the title was offered to complainant, it is in his election to accept it or reject it. He must accept it as it was at that time. This he declined to do, and defendant took the unnecessary precaution to tender him a deed for the property, and also the money which he had received towards the payment of the purchase-money. Declining to accept the deed, and to go on with the contract at that time, he

was in no condition afterwards to recede from his position and take the title as it stood, or say that he would take the title as it stood and accept the property, and it may be said that upon tendering the deed and fifty ($50) dollars in money, and the refusal of complainant to accept, the obligations of the parties were entirely at an end. After these transactions were ended, complainant put upon record the papers which he had received, the letters which had been written by the defendant, and also the contract which he had made with defendant's agent for the purchase of the property, and thereupon defendant brought an action at law against him to recover damages for clouding the title."

It was thus found by the court, from the testimony offered on trial of this case, that Hanscome had tendered to DeSollar a deed for the property, and that DeSollar had refused it. This finding of a tender of a deed, as a matter of fact, even if the questions were open, is an error, which is shown by the testimony of Hanscome himself. This error could occur only by reading his direct examination alone. But his cross-examination at page 63 of the printed record corrects this:

"Q. Did you tender DeSollar a deed of this property when you met him on the night of the 21st?

"A. I asked him if he would accept a deed. I told him I would give him a deed if he would accept it. I asked him if he would accept it.

"Q. Then you told him you would give him a deed?

"A. To my understanding, I did.

"Q. You didn't have any deed with you?

"A. No, sir."

Whether he did even that much or not is a matter affirmed on one side by him and his son-in-law, Herbert, and denied on the other by DeSollar and a disinterested witness, Goldberg.

DeSollar's testimony on pages 29 and 30 directly contradicts this, and states that the only thing done at the time of that conversation was a tender by Hanscome of $50.

"A. He introducted me to his son-in-law, a gentleman by the name of Herbert. Mr. Hanscome remarked to me that he was going to leave the city, and that there was $50 in gold, which he took from his pocket and offered to me, with the remark that 'I demanded from you three letters and the contract that you have in your possession.' I told him—said I, 'Hanscome, you must think that I am a darned fool. I contracted with Mr. Henry in good faith. I have paid him a much larger amount than that.' He then remarked that that was all he received from Henry, and I would have to look to Henry for the balance. I told him—said I, 'Hanscome, you have tried to euchre me out of this property from the start. I made a contract with your agent, which you have ratified by your action, in good faith. I have paid money in good faith, and I have been ready from the date of the contract to have this matter consummated, and I insist upon your getting your deed ready. I am ready, and have been, and want this matter closed up immediately.'

"Q. Did you take the money?

"A. I did not.

"Q. Was that the end of the conversation?

"A. Yes, sir. He left then; said he would have nothing more to do with it; that he had left the matter with his attorney."

Goldberg's testimony, as shown on page 160 of the record, is as follows:

"Q. State now what was said by the parties during the conversation.

"A. Mr. Hanscome said to DeSollar, Here is $50, and I want you to give up certain receipts or letters that he, DeSollar, held in his possession, and Mr. Hanscome said

that the sale was off, and DeSollar said, 'You must take me for a darn fool,' and DeSollar said, 'I want you to comply with your part of the contract, as I am ready, and have been for some time, to comply with my part of the contract.' Hanscome said no, that the sale was off. He said that he was going away in a few days.

"Q. State whether or not there was anything said by Hanscome about the tender of a deed to Mr. DeSollar for the property.

"A. No, sir; I didn't hear anything like that.

"Q. What, if anything, did DeSollar say about acceptins or not accepting the $50?

"A. He said he wouldn't accept it, but he was ready to comply with his part of the contract, and had been for some time, and he wanted Hanscome to do the same."

After making the agreement and when Hanscome had arrived at Denver, DeSollar called upon Hanscome for an abstract of title, which was procured by Hanscome in pursuance of this request and furnished to the appellant, DeSollar.

There was of record, as shown by the abstract, a receipt (called the Dubbs receipt) for money indicating an agreement for the sale of the same land to a third party. Whatever the legal effect of this recorded receipt may have been, it caused some discussion between the complainant and defendant as to the obligation of the defendant to dispose of said receipt. Prior, however, to the expiration of the time to act under the agreement and on about the 18th day of March, this complainant, DeSollar (having arranged with the holder of the receipt), offered to complete his contract. This conversation is related by Montie Kilbourne, a witness for the complainant, as follows:

"Q. Do you remember of meeting Mr. Hanscome with Mr. DeSollar during that month?

"A. I do.

"A. I told Mr. Hanscome that I had seen Mr. Chittenden, and that I had made arrangements with him to get a quitclaim from him for that receipt, and that if he would not remove it, I should do it at my own expense; that to go ahead and get his deed ready; that I was ready and had been, and I was anxious to have this matter closed up. He then informed me that he had left the matter with his attorney, Mr. Bentley, and went over to the St. James Hotel.

"Q. Who was present at the interview?

"A. A gentleman by the name of Montie Kilbourne.

"Q. Up to this time, in your interview with Mr. Hanscome, what, if anything, had he ever said about the sale being off, or about the authority, or want of authority, or Mr. Henry, or anything of that kind?

"(Defendant objects on the ground that the question is leading, and that it is incompetent, irrelevant, and immaterial.)

"A. He had never said anything about the sale being off or about not ratifying Mr. Henry's actions; on the contrary, he had money which had been paid; he said nothing.

"DEFENDANT: Now, I object to all that part of the answer, except the last, as not responsive—'he said nothing'; all the rest is objected to. (Printed record, page 27).

Hanscome testifies that "he (DeSollar) came running along on the street between 17th and Curtis, hollowing to me, 'Hanscome, Hanscome,' and I made a little halt, and he came up in great haste. I told him if he had business with me, he could go to the St. James Hotel; that he had to go and see my attorney; that the street was no place to talk; that the public highway was no place for business. I did not know but what it was a policeman that was after me, hollowing that way. In the first place, I didn't pay much attention, but when I heard my name then I halted.

"Q. Do you know what he spoke about?

"A. He wanted to fix that matter up, or something like that. I told him I had nothing to fix up; that he could see my attorney; that any trade was off. I paid little at-

tention. It wasn't more than a minute or so. He didn't go to the hotel to see me." (Printed record, page 48.)

Upon the 23d day of March, the day before the expiration of the time upon which the contract was to be executed, Hanscome finally refused to perform his part of it. His version of this refusal is as follows :

"Q. Well, go on and tell the conversation.

"A. He said he wanted the abstract. I told him he would have to go to Mr. Bentley for the abstract; he had it. He said, 'I have concluded I will take that deed.' I told him I would not give it to him; he would have to go and see my attorney; I had left all my papers with Mr. Bentley now. He said something about a lawsuit and the gentleman that was with him.

"Q. State what was said about that.

"A. I told him I didn't want it—the lawsuit; but if it was necessary I would get out of it the best way I could. I told the gentleman that was with him that I didn't want to waste so much time; that I had a good deal of time that I wanted for other purposes, and we had some little talk in that way. I don't remember every word that was said, but that was about all." (Printed record, p. 53).

Mr. DeSollar, the complainant, testified to this (see page 30 of record): "I saw him again on the 23d, in his room at the St. James Hotel.

"Q. What occurred then?

"A. I took a gentleman, an acquaintance of mine, round to see if he was willing or if he was ready to complete his part of the contract, and said that I was ready and want the matter closed up."

Mr. F. D. Morse testifies (see page 40 of record) to a conversation on the same day between Mr. DeSollar and Hanscome's attorney :

"Q. Did you go with Prof. DeSollar to Bentley's office on any occasion?

"A. I did.

"Q. About when was it?

"A. Well, it was about the 23d or 24th of March last, between about four and six in the afternoon.

"Q. What transpired there?

"A. After we went in, first, Mr. DeSollar introduced me to Mr. Bentley, and Mr. DeSollar told Mr. Bentley that he had been trying to settle up that matter with Mr. Hanscome, and he had referred him to him, and he said that he was ready to comply with his part of the agreement and he wanted a deed. Mr. Bentley smiled rather sarcastically and said he had no deed for him. Mr. DeSollar repeated two or three times. Finally he says, 'I can't make you any deed.' Something like that was about all that was said.

"Q. If there was anything else said, state it fully.

"A. There was not anything said, except just that line; Mr. DeSollar had it over two or three times."

Both defendant and his attorney, on the 23d of March, absolutely refused to comply with the agreement upon which this suit is brought, and on the next morning Hanscome left the city of Denver, before the expiration of time in which the contract was to be performed.

As to all this, the same witnesses were examined in the law case between the same parties. Their testimony may be found as given in that case in the printed record: Hanscome, page 99; DeSollar, page 128; Herbert, page 133; Goldberg, page 160; Kilbourne, pages 137 and 138; Morse, page 140.

In applying the doctrine of *res judicata*, this court has extended the rule much farther in the case of Beloit *v.* Morgan (7 Wall. 619) than is necessary in this case. In that case the court say:

"The parties were identical and the title involved was the same. All the objections taken in this case might have been taken in that. The judgment of the court could have been invoked upon both of them, and if it were adverse to the appellant, he might have brought the decision here by a writ of error for review. The court had full jurisdiction over the parties and subject. Under such circumstances, a judgment is conclusive, not only as to the res of that case, but as to all further litigation between the same parties touching the same subject-matter, though the res itself may be different." (Citing the case of Gardner *v.* Buckbee, 3 Cow. 120; Bouchaud *v.* Dias, 3 Den. 238; Doty *v.* Brown, 4 N. Y. 71; Babcock *v.* Camp, 12 O. St. 11, and numerous English cases.) The opinion of this court continues, saying: "But the principle reaches further. It extends not only to the questions of fact and law, which were decided in the former suit, but also to the grounds of recovery or defence, which might have been, but were not, presented." Citing Henderson *v.* Henderson (1 Hare, 115), and adopting the following quotation in that case: "The plea of *res judicata* applies, except in special cases, not only to the points upon which the court was required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

Beloit *v.* Morgan, 7 Wall. 619.

The case at bar comes strictly within the narrowest expression of the rule to be found in the case of Aurora *v.* West (7 Wall. 82), where one paragraph of the opinion state that the—

"Better opinion is, that the estoppel, where the judgment was rendered upon the merits, whether on demurrer, agreed statement or verdict, extends to every material allegation or statement which, having been made on one

side and denied on the other, was at issue in the cause and was determined in the course of the proceedings."

Aurora *v.* West, 7 Wall. 82.

The entire opinion, however, would justify the application, if necessary, of the broader rule stated in the Beloit case.

While Mr. Justice Miller delivered a dissenting opinion in that case, he does not dissent from going so far as the rule last above quoted. He says the rule is—

"That when a former judgment is relied on, it must appear from the record that the point in controversy was necessarily decided in the former suit, or made to appear by extrinsic evidence that it was in fact decided."

The record in the former case between Hanscome and DeSollar makes it apparent that the question of ratification by Hanscome, of his refusal to complete the contract, and of DeSollar's readiness to do so, were necessarily decided in the former suit, and we have made it appear by the extrinsic evidence, consisting of the testimony of witnesses and of the charge of the judge in the former case, that these facts were actually decided.

The apparent conflict of the above opinions has been reconciled by this court in the well-considered case of Cromwell *v.* Sac County (94 U. S. 351), where the difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action, is said to be, and to have always been,—

"That in the former case the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand

in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defences actually existed, of which no proof was offered, such as forgery, want of consideration, or payment. If such defences were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defences never existed. The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defence actually presented in the action, but also as to every ground which might have been presented, is strictly accurate when applied to the demand or claim in controversy. Such demand or claim, having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law upon any ground whatever.

"But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."

Cromwell *v.* Sac County, 94 U. S. 351.

In a recent case this court followed the case last mentioned, saying:

"The law in respect to such estoppel was fully considered and determined by this court in the case of Cromwell *v.* Sac County, 94 U. S. 351."

And the expressions above quoted are reiterated and followed.

Nesbitt *v.* Independent District of Riverside, 144 U. S. 610.

The record before the court brings this case within the narrow as well as the broader rule. If it be contended that this is an action between the same parties upon a different claim or demand, still the record of the former case between these same parties shows the matter to have been directly an issue, and necessarily decided by the jury in reaching their verdict. It is also shown by extrinsic evidence—the testimony of witnesses and charge of the judge—that the question was actually litigated and determined in the first action.

This case well illustrates the reason and justice of the doctrine. The testimony of the same witnesses to the same facts and upon the same question are in both cases, with the difference that the testimony of Hanscome is modified in this suit by his experience in the other case.

Whether the presiding judge at the trial of the case of Hanscome *v.* DeSollar erred or was right in his instructions to the jury as to the law of the case,—and it seems, by his opinion delivered orally in the present case, that he now thinks he erred,—still the charge was the law of the case. The jury were bound morally and by their oaths taken in the case to follow those instructions.

"The essential idea of a charge is that it is authoritative as an exposition of the law, which the jury are bound by their moral obligations to obey."

Bouvier's Law Dictionary, title "Charge."

"The first duty of the judge is to make the jury comprehend what is the question of fact in dispute between the parties. * * * He should never omit the first duty of the judge, that of making the jury see the exact naked point in dispute, and leaving that point to be settled by the yea or nay of the jury."

Nash's Pleading and Practice, 978.

11 Amer. and Eng. Enc. 252.

Sparf *v.* United States, decided January 21, 1894, Oct. term, 1894, of Sup. Ct. U. S.

The judge performed his duties so thoroughly in the law case that there could be no mistake on the part of the jury as to the exact question of fact involved. Under those instructions, the verdict could not have been reached without deciding affirmatively the questions of fact above stated.

The charge of the judge was right. His error is in his opinion in this case. Malice need not have been proven in the law case of Hanscome *v.* DeSollar; but if this contract, as put on record by DeSollar, had not been ratified or had been by the parties rescinded—in other words, if it was not in force between them at the time it was placed upon the record, malice would be implied, as in libel and and slander. DeSollar's position in the law case was to admit the act of putting upon the record the contract, and to affirm in himself the right to do so. In doing this he put himself in the position of the following case:

"If, in an action for slander of title, the defendant admits the slander and avers the better title in himself, the court may investigate his title in the same action with the onus on himself to succeed entirely on the strength of his own title."

Dalton *v.* Wickliff, 35 La. An. 355.

IN

The Supreme Co

OF THE

United States.

October Term, 1893.

HERBERT S. DE SOLLAR,
Appellant,
vs.
WILLIAM B. HANSCOMB,
Appellee.

No. 630.

Appeal from the Circuit Court of the United States for the District of Colorado.

APPELLEE'S BRIEF.

W. C. KINGSLEY,
Attorney for Appellee.

C. J. KELLY, Printer, Denver.

IN

The Supreme Court

OF THE

United States.

October Term, 1893.

HERBERT S. DE SOLLAR, *Appellant,* vs. WILLIAM B. HANSCOMB, *Appellee.*	*No. 630.*

Appeal from the Circuit Court of the United States for the District of Colorado.

APPELLEE'S BRIEF.

There are but two questions involved in this case. One is a question of *fact*, the other of *law*.

This action is brought to enforce a specific performance of a contract for the sale of real estate.

The written agreement was not made by

authority because it differed from instructions given.

Vide, pp. 9 and 10, Printed Record.

It is contended by appellant, however, that such agreement was subsequently ratified by appellee after his arrival in Denver, by calling upon appellant, furnishing him abstracts, negotiating, etc., and so the Court below considered.

Vide, copy of opinion of Court on file delivered orally and not in the record.

Appellee was released from such agreement by the offer he made to perform, and the refusal of appellant to accept a deed except upon conditions not contained in the agreement.

Vide, testimony of appellee, p. 52, Printed Record.

Testimony of F. W. Herbert, p. 68, Printed Record.

True, the appellant denies such offer to perform on the part of appellee (pp. 29 and 72, Printed Record).

Vide, testimony of H. K. Goldburg, p. 160, Printed Record.

The Circuit Court found this fact of offer to perform in favor of appellee upon the conflicting testimony.

Vide, the opinion above cited.

This Court will not disturb the finding of the Court below upon conflicting testimony, nor reverse the decree when it is so well sustained by the evidence.

Lytle vs. Arkansas, 22 How., U. S., 193.

Parker vs. Phetteplace *et al.*, 1 Wall., 684.

SECOND.

As to the question of law—

Appellant upon the trial claimed that the verdict of the jury in the law case was decisive of the obligation of appellee to perform this agreement.

Before this action was brought, the appellant had recorded this agreement and the correspondence in regard to it; and the appellee brought an action at law against appellant in the same Court for damages, for clouding title, etc.

It was shown that appellant acted upon legal advice before recording such papers, and the jury, upon instructions, found for the defendant.

The verdict in effect said that the appellant was not guilty of a wilful or malicious wrong in putting such papers on record, but having acted in good faith under the advice of legal counsel, should not be called upon to respond in damages in that action.

That such verdict does not establish the right of the appellant to have a specific performance in this case, is too clear to require comment.

Vide, opinion of Court below above referred to.

We cannot escape the conviction that this appeal was certainly taken merely for delay and to embarrass the appellee in the full enjoyment by him or his grantee of property which was rapidly rising in value.

Respectfully submitted,

W. C. KINGSLEY,

Attorney for Appellee.

158

158-216

Appellee's Brief

IN

The Supreme

OF THE

United States.

October Term, 1893.

HERBERT S. DE SOLLAR,
Appellant,
vs.
WILLIAM B. HANSCOMB,
Appellee.

No. ~~[illegible]~~ 303

Appeal from the Circuit Court of the United States for the District of Colorado.

APPENDIX TO APPELLEE'S BRIEF.

W. C. KINGSLEY,
Attorney for Appellee.

C. J. KELLY, Printer, Denver.

Appendix to appellee's brief

In the Circuit Court of the United States.

MAY 9TH, 1890.

HALLETT, J. (Orally).

No. 2437, Herbert S. De Sollar vs. William B. Hanscome, is a bill for specific performance of a contract of purchase of town lots.

The negotiation, which, it is alleged, resulted in a contract by which plaintiff became entitled to the lots, was begun with an agent of defendant, residing here in Denver. The defendant lived at Wichita, in the State of Kansas, and was in that place during the month of February, 1888, when these negotiations were begun.

The agent had authority from defendant to sell the lots for five thousand dollars, half cash, the balance in one and two years. He made an agreement in writing on the third day of March, 1888, by which he agreed to sell the lots for the sum of five thousand dollars—a small amount, two hundred dollars, I believe, in hand, and the remainder of the fifty per cent cash on the twenty-fourth day of the same month, and deferred payments, twenty-five per cent each, in one and two years.

He advised defendant of what he had done by letter, and this letter was received by defendant either just as he was leaving Wichita for this place, or upon his arrival here, the letter being forwarded from Wichita to him, following him from that place to this.

There is some contradiction in the testimony on this point as to when the letter was received, but that is not a matter of any importance.

On arriving here, about the tenth or twelfth of March, 1888, some discussion took place between complainant and defendant in respect to the contract and as to the agent not having followed his authority in agreeing to wait for the one-half cash until the twenty-fourth day of March. The parties are not agreed as to the extent and character of these discussions. They contradict each other very strongly as to what took place in each interview; but it seems that

they came pretty soon to the understanding that the money, one-half, should be paid immediately, and that the contract should be carried out in other respects; and, thereupon, an abstract of title was submitted to complainant, and he gave it to his attorney, and the attorney discovered that some paper made by a person named Dubbs, to the effect that the property had been sold to some one, and twenty-five dollars had been received by Dubbs towards the purchase money, had been put on record.

Defendant denied that Dubbs had any authority to act for him, and that he was in any way bound by this agreement; and there was a good deal of discussion between them as to what should be done about this paper, the plaintiff contending that defendant was bound to have it removed from the record, or cancelled in some way, and defendant claiming that he should not do anything about it; that the paper was without any value or significance, and that he would not make any effort to have it cancelled.

Each of the parties saw the other's attorney; that is, defendant went to see the complainant's attorney, and complainant went to see defendant's attorney, and they came to no agreement after all in respect to it. These discussions continued on until about the 20th or 21st of March, pretty near the day when the 50 per cent of purchase money was to be paid under the agreement made by the agent, Mr. Henry, on behalf of defendant, with Mr. De Sollar.

About that time—I think about the 21st—defendant proceeded to plaintiff's place of business, and offered him a deed for the premises, offered to give him back fifty dollars which he had received, and which was paid by complainant to his agent, Mr. Henry, when the first agreement was made. This was refused. Complainant, on that day, or the next—at all events, at some time subsequently—sought out defendant again, and offered to take the property, complying with his terms, and asking for no action on the part of defendant in respect to the Dubbs paper.

This was then declined by defendant. He replied to complainant's application, that the matter was in the hands of his attorney, and that he should do nothing more about it.

Under these circumstances, the Court is asked to decree

a specific performance of the contract, and, upon reviewing the whole matter, it must be plain that no contract was in fact ever completed between the parties—that is, none which could be binding upon defendant. It is true that he agreed to sell the property to complainant for five thousand dollars, on terms of payment then agreed upon; but, when they came to the investigation of the title, complainant deemed the Dubbs receipt a serious matter, and declared himself unwilling to accept the title until that should be cancelled, and this defendant was unwilling to do. In that condition of affairs, complainant was bound to accept the title as offered, or to reject it. He could not, as he did, insist upon performance of the contract, and that defendant should first cause the receipt to be cancelled. In other words, upon a sale of real estate, the purchaser must take the title which the vendor has, as it is, whether good or bad, or he must decline to take it. He can not, when it comes to the point of accepting the property, say that he will insist upon his contract, and require of the seller that he shall do something to make the title good. So, in this instance, when the title was offered to complainant, it was in his election to accept it or reject it. He must accept it as it was at that time. This he declined to do, and defendant took the necessary precaution to tender him a deed for the property, and also the money which he had received towards the payment of the purchase money.

Declining to accept the deed, and to go on with the contract at that time, he was in no condition afterwards to recede from his position, and take the title as it stood, or say that he would take the title as it stood, and accept the property. And, it may be said that, upon tendering the deed, and fifty dollars in money, and the refusal of complainant to accept, the obligations of the parties were entirely at an end.

After these transactions were ended, complainant put on record the papers which he had received, the letters which had been written by defendant, and also the contract which he had made with defendant's agent for the purchase of the property; and thereupon defendant brought an action at law against him to recover damages for clouding the title. That action was tried in this Court, and the jury returned a verdict for defendant in that action, the complainant in this bill.

In the mind of complainant's counsel, this verdict has been received as establishing the ratification of the contract by defendant to this bill, and concluding the whole matter.

At the trial of that cause, the jury was advised that, if the parties continued their negotiation after the defendant in this bill came here, and if the parties came to an agreement in all matters in respect to the property, except as to the Dubbs receipt, they might regard the contract as made by the agent—though he had no authority to make it in the form in which it was made—as having been ratified by his principal. That, of course, was said with reference to that action, and it was entirely correct in respect to that suit, because that was an action which depended very much upon the point whether there was any agreement whatever between the parties in respect to the property.

In other words, in a suit for clouding the title, it must appear that the act of the defendant was willful, and to a considerable extent malicious, done with intent to injure the owner of the property; and when there were negotiations continued through many days in respect to the purchase of the property, and which resulted in an agreement which was full and complete in all its details, except that there were some matters of difference between the parties touching the title, it could not be said that the purchaser would be subject to an action for putting the papers on record.

There can be no reason to doubt the correctness of the position assumed in the trial of that action, and that it was well decided by the jury.

But, conceding all that, the verdict of the jury does not establish everything which is necessary to have specific performance of the contract. There was an agreemeent between the parties, full and complete in every respect; and when they came to the title, there was something in the title which was not acceptable to the purchaser, therefore he declined to receive the property. Afterwards he changed his mind, and concluded that he would take it. When he changed his mind, it was too late. The defendant in his bill had already offered to perform the agreement as it was made, to give him what title he had, and he would not accept it. It was not competent, in a case like this, after-

wards to say that he had reached a different conclusion, and that he would take the property. The principle is applicable to all cases in which the subject of the negotiation is property which is rapidly rising in value, and in which a few days may make a very great difference. It is said that this property, during the time the negotiations were going on, increased in value to the extent of one-fifth. That is to say, at the time the contract was made, five thousand dollars was considered a fair price for it. It could have been sold, when the negotiations ended, for six thousand dollars. The witnesses testify that, within a year or two from that time, it had reached a much larger sum. Parties dealing with each other in respect to property of that kind, should act promptly; should raise no technical or whimsical objections to the title, and should proceed, with candor and good faith, to complete their arrangements, in the shortest possible time.

In my judgment, that was not done in this case.

In view of all the circumstances of the transaction, I think that complainant was bound to accept the title when it was tendered to him. Rejecting it then, he was not at liberty afterwards to say he would accept it, and insist upon the fulfillment of the agreement.

The decree will be to dismiss the bill of complaint, and on the cross-bill to cancel the papers which were put on record by complainant, the defendant returning the fifty dollars which he received from his agent, in respect to the sale of the property.